Changes to Legislation: as of 5 April 2024, this Act is up to date with all changes known to be in force.

Number 21 *of* 2011

COMMUNICATIONS REGULATION (POSTAL SERVICES) ACT 2011

REVISED

Updated to 10 April 2019

This Revised Act is an administrative consolidation of the *Communications Regulation (Postal Services) Act 2011*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Companies (Amendment) Act 2019* (10/2019), enacted 11 April 2019, and all statutory instruments up to and including *Communications Regulation (Universal Postal Services) Order 2019* (S.I. No. 150 of 2019), made 10 April 2019, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 21 *of* 2011

COMMUNICATIONS REGULATION (POSTAL SERVICES) ACT 2011

REVISED

Updated to 10 April 2019

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Number 21 *of* 2011

COMMUNICATIONS REGULATION (POSTAL SERVICES) ACT 2011

REVISED

Updated to 10 April 2019

AN ACT TO PROVIDE FOR THE REGULATION OF POSTAL SERVICES, TO PROVIDE FOR THE IMPLEMENTATION OF DIRECTIVE 97/67/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 15 DECEMBER 1997 [1] AS AMENDED BY DIRECTIVE 2002/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 10 JUNE 2002 [2] AND DIRECTIVE 2008/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 FEBRUARY 2008 [3], TO CONFER ADDITIONAL FUNCTIONS ON THE COMMISSION FOR COMMUNICATIONS REGULATION, TO ENSURE THE PROVISION OF A UNIVERSAL POSTAL SERVICE, TO PROVIDE FOR THE DESIGNATION OF A UNIVERSAL POSTAL SERVICE PROVIDER, TO PROVIDE FOR FINANCIAL SUPPORT FOR UNIVERSAL POSTAL SERVICE PROVISION, TO PROVIDE FOR THE AUTHORISATION OF POSTAL SERVICE PROVIDERS, TO MAKE FURTHER PROVISION IN RELATION TO POSTAL SERVICES, TO PROVIDE FOR ENFORCEMENT MEASURES, TO PROVIDE FOR OFFENCES IN RELATION TO POSTAL SERVICES, TO REGULATE THE PROVISION OF FREE POSTAGE FOR CERTAIN CANDIDATES FOR ELECTION, TO PROVIDE FOR THE ESTABLISHMENT, OPERATION AND MAINTENANCE OF A SYSTEM OF POSTCODES, FOR THOSE AND OTHER PURPOSES TO REPEAL CERTAIN PROVISIONS OF, AND TO AMEND AND EXTEND, THE COMMUNICATIONS REGULATION ACT 2002, THE INTERCEPTION OF POSTAL PACKETS AND TELECOMMUNICATIONS MESSAGES (REGULATION) ACT 1993, THE SEANAD ELECTORAL (UNIVERSITY MEMBERS) ACT 1937, THE ELECTORAL ACT 1992, THE PRESIDENTIAL ELECTIONS ACT 1993, THE EUROPEAN PARLIAMENT ELECTIONS ACT 1997 AND CERTAIN OTHER ACTS AND STATUTORY INSTRUMENTS, TO AMEND THE BROADCASTING ACT 2009 AND TO PROVIDE FOR RELATED MATTERS.

[2*nd August*, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

Short title, collective citation and construction.

1.— (1) This Act may be cited as the Communications Regulation (Postal Services) Act 2011.

(2) The Communications Regulation Acts 2002 to 2010 and this Act (other than *sections 62* to *65* and *Part 4*) may be cited together as the Communications Regulation Acts 2002 to 2011 and shall be read together as one.

[1] OJ No. L15, 21.1.1998, p.14
[2] OJ No. L176, 5.7.2002, p.21
[3] OJ No. L52, 27.2.2008, p.3

Definition.

2.— In this Act, "Minister" means the Minister for Communications, Energy and Natural Resources.

Expenses.

3.— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Repeals and revocations.

4.— (1) The enactments specified in *Part 1* of *Schedule 1* are repealed to the extent specified in *column (4)* of that Part.

(2) The statutory instruments specified in *Part 2* of *Schedule 1* are revoked to the extent specified in *column (4)* of that Part.

Amendments to other enactments.

5.— The enactments specified in *Schedule 2* are amended to the extent specified in *column (4)* of that Schedule.

PART 2

Regulation of Postal Services

Chapter 1

Interpretation and general

Interpretation (*Part 2*).

6.— (1) In this Part—

"access point" means any box, receptacle or other facility, including post boxes, provided for the public either on the public road or at a post office, where postal packets, or any class of postal packets, may be deposited with a postal service provider by senders for transmission by post;

"Act of 1983" means the Postal and Telecommunications Services Act 1983;

"authorisation" means an authorisation to provide a postal service pursuant to *section 38*;

"addressee", in relation to a postal packet, means the person to whom it is addressed;

"clearance" means the operation of collecting postal packets by a postal service provider for transmission, including to places outside the State;

"Commission" means Commission for Communications Regulation;

"cross-border mail" means mail from or to another Member State or from or to a third country;

"Directive" means Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended;

"distribution" means the process from sorting of postal packets at the distribution centre to delivery of postal packets to their addressees;

"enactment" has the meaning assigned to it by the Interpretation Act 2005;

"mail bag" includes any form of container or covering in which postal packets in the course of transmission by post are enclosed by a postal service provider for the purpose of conveyance, whether or not it contains any such postal packets;

"post box" means any receptacle provided by a postal service provider for the purpose of receiving postal packets, or any class of postal packets, for transmission by post;

"post office" includes any house, building, room or place used, whether exclusively or otherwise, for the provision of a postal service by a postal service provider;

"postage" means the sum chargeable for the transmission of postal packets;

"postal network" means the system of organisation and resources of all kinds used by a universal postal service provider for the purposes, in particular, of—

(*a*) the clearance of postal packets,

(*b*) the routing and handling of those postal packets from the access point to the distribution centre, and

(*c*) the distribution to the addresses shown on postal packets;

"postal packet" means an item addressed in the final form in which it is to be carried by a postal service provider and includes a letter, parcel, packet or any other article transmissible by post;

"postal service provider" means any person providing one or more than one postal service;

"postal services" means services involving the clearance, sorting, transport and distribution of postal packets;

"postal service user" means any person benefiting from postal service provision as a sender or as an addressee;

"postal service within the scope of the universal postal service" shall be read in accordance with *section 37*;

"Principal Act" means the Communications Regulation Act 2002;

"public road" has the same meaning as in section 2 of the Roads Act 1993;

"publish" means make available to the public;

"quality of service standards" has the meaning given to it by *section 32*;

"sender" means a person responsible for originating postal packets;

"sharing mechanism" shall be read in accordance with *section 36*;

"statutory auditor" has the meaning assigned to it by the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010);

"statutory audit firm" has the meaning assigned to it by the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010);

"terminal dues" means the remuneration of a universal postal service provider for the distribution of incoming cross-border mail comprising postal packets from another Member State or from a third country;

"universal postal service" shall be read in accordance with *section 16*;

"universal postal service provider" means any postal service provider for the time being designated under *section 17* or *18*.

(2) A word or expression used in this Part and in the Directive or, as the case may be, in Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, has, unless the contrary intention appears, the same meaning in this Part as in the Directive or, as the case may be, in Directive 2008/6/EC.

(3) For the purposes of this Part—

(*a*) a postal packet shall be deemed to be in the course of transmission by post from the time of its being presented at an access point to the time of its being delivered,

(*b*) the delivery of a postal packet of any description to any person authorised to receive postal packets of that description for the post shall be a delivery to a post office, and

(*c*) the delivery of a postal packet—

(i) at the premises to which it is addressed or redirected, unless the premises are a post office from which the postal packet is to be collected,

(ii) to any box or receptacle to which the occupier of those premises has agreed that postal packets addressed to persons at those premises may be delivered, or

(iii) to the addressee or to the addressee's agent or to any other person considered to be authorised to receive the postal packet,

shall be a delivery to the addressee.

Service of notices under this Part.

7.— (1) Subject to *subsection (3)*, a notice or notification required to be given to a person by the Commission by or under this Part, shall be addressed to the person by name and shall be given to the person in one of the following ways—

(*a*) by delivering it to the person,

(*b*) by leaving it at the address at which the person ordinarily resides or carries on business,

(*c*) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides or carries on business,

(*d*) if an address for the service of notices or notifications has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to the person to, that address,

(*e*) where there is a facility for receiving a copy of the notice or notification by electronic mail or a facsimile of the notice or notification by electronic means at the address at which the person ordinarily resides or carries on business, by sending a copy of the notice or notification by electronic mail or a facsimile of the notice or notification by such means to that address, provided that the notice is also served or given in any of the other ways referred to in this subsection other than this paragraph.

(2) For the purposes of this section, a company registered under the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(3) *Subsection (1)* shall not apply to a notification made by the Commission under—

(*a*) *section 16(8)*,

(*b*) *section 20(1)(b)* or *(2)(b)*, or

(*c*) *section 32(4)(b)* or *(9)*.

Chapter 2

Commission for Communications Regulation

Amendment of section 2 of Principal Act (interpretation).

8.— Section 2 of the Principal Act is amended in subsection (1)—

(*a*) by substituting the following for the definition of "postal services":

" 'postal services' has the meaning assigned to it by the *Communications Regulation (Postal Services) Act 2011*;",

and

(*b*) by inserting the following definitions:

" 'postal service provider' has the meaning assigned to it by the *Communications Regulation (Postal Services) Act 2011*;

'postal service user' has the meaning assigned to it by the *Communications Regulation (Postal Services) Act 2011*;

'postal service within the scope of the universal postal service' has the meaning assigned to it by the *Communications Regulation (Postal Services) Act 2011*;

'universal postal service' has the meaning assigned to it by the *Communications Regulation (Postal Services) Act 2011*;".

Amendment of section 10 of Principal Act (functions of Commission).

9.— Section 10 of the Principal Act is amended in subsection (1)—

(*a*) by inserting the following after paragraph (*b*):

"(*ba*) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,",

and

(*b*) by substituting the following for paragraph (*c*):

"(*c*) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the *Communications Regulation Acts 2002 to 2011* in relation to the provision of postal services,".

Amendment of section 12 of Principal Act (objectives of Commission).

10.— Section 12 of the Principal Act is amended—

(*a*) in subsection (1) by substituting the following for paragraph (*c*):

"(*c*) in relation to the provision of postal services—

(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,

(ii) to promote the interests of postal service users within the Community, and

(iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision,

and",

(*b*) by inserting the following after subsection (2):

"(2A) In relation to the objectives referred to in subsection (1)(*c*), the Commission shall take all reasonable measures aimed at achieving those objectives, including—

(*a*) establishing such monitoring and regulatory procedures for the purposes of ensuring compliance by postal service providers with the obligations imposed on them by or under the *Communications Regulation Acts 2002 to 2011* as are necessary to secure the provision of a universal postal service,

(*b*) ensuring that postal service users may avail of a universal postal service that meets their reasonable needs,

(*c*) in so far as the facilitation of competition and innovation is concerned, ensuring that postal service users derive maximum benefit in terms of choice, price and quality, and

(*d*) in so far as the promotion of the interests of postal service users within the Community is concerned—

(i) ensuring a high level of protection for postal service users in their dealings with postal service providers, in particular by—

(I) ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved, and

(II) consulting and cooperating with the National Consumer Agency as appropriate,

and

(ii) addressing the needs of specific social groups, in particular, disabled postal service users.",

and

(*c*) in subsection (4) by substituting "subsections (1), (2), (2A) and (3)" for "subsections (1), (2) and (3)".

Power of Commission to obtain information from postal service provider.

11.— The Principal Act is amended by inserting the following after section 13E:

"13F.— (1) The Commission may at any time, by notice in writing, require a postal service provider to provide it with such written information as, subject to subsection (3), it considers necessary to enable it to carry out its functions and, in particular, for any of the following purposes:

(*a*) establishing compliance by the postal service provider with the obligations imposed on it by or under the *Communications Regulation Acts 2002 to 2011*;

(*b*) making a designation under *section 17* or *18* of the *Communications Regulation (Postal Services) Act 2011*;

(*c*) conducting a review for any of the purposes of the said *section 17* or *18*;

(*d*) assessing the contribution (if any) to be made by a postal service provider to a sharing mechanism established under *section 36* of the *Communications Regulation (Postal Services) Act 2011*;

(*e*) assessing the contribution to be made by a postal service provider to the administration costs of the Commission under section 30(2);

(*f*) statistical purposes.

(2) A requirement made under subsection (1) shall—

(*a*) specify the information required, and

(*b*) state the purposes for which that information is required, including, where relevant, the statistical purposes for which that information is required.

(3) The nature and extent of the information, the subject of a requirement made under subsection (1), shall be proportionate to the use to which the information is to be put by the Commission in the performance of its functions.

(4) Information shall be provided by a postal service provider pursuant to a requirement made under subsection (1) in such form and manner and within such reasonable period as may be specified by the Commission in the notice.

(5) A postal service provider commits an offence if it—

(*a*) fails to comply with a requirement made under subsection (1) within the period specified in the notice or within such extended period as the Commission allows, or

(*b*) in purporting to comply with such a requirement, provides to the Commission information that the postal service provider knows to be false or misleading in a material respect.

(6) In proceedings for an offence under subsection (5) involving a failure by a postal service provider to comply with a requirement made under subsection (1), it is a defence if the postal service provider establishes—

(*a*) that it did not know and could not be reasonably expected to know or ascertain the required information, or

(*b*) that the disclosure of the information was prohibited by any enactment or rule of law.

(7) A postal service provider who commits an offence under subsection (5) is liable on summary conviction to a class A fine.

(8) (*a*) The Commission shall give to the European Commission, upon request, appropriate and relevant information necessary for it to carry out its tasks under the Directive (within the meaning of *section 6* of the *Communications Regulation (Postal Services) Act 2011*).

(*b*) Nothing in section 24(1) shall prevent the disclosure of confidential information (within the meaning of section 24) by the Commission to the European Commission under this subsection.".

Alternative procedure for enforcement of section 13F of Principal Act.

12.— The Principal Act is amended by inserting the following after section 13F (inserted by *section 11*)—

"13G.— (1) As an alternative to bringing a prosecution for an offence under section 13F(5), the Commission may apply to the High Court to make a compliance order under subsection (4). Such an application is to be by motion.

(2) The High Court may hear the application only if it is satisfied that a copy of the application has been served on the postal service provider concerned. On being served with such a copy, the postal service provider becomes the respondent to the application.

(3) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under subsection (1). The Court may not refuse interim or interlocutory relief merely because the

Commission may not suffer damage if relief were not granted pending determination of the application.

(4) On the hearing of an application made under subsection (1), the High Court may make an order requiring the postal service provider to comply with section 13F or may refuse the application.

(5) If the High Court makes an order under subsection (4), it may make such ancillary orders as it considers appropriate.".

Amendment of section 38A of Principal Act (Commission may require persons to give evidence or produce documents).

13.— Section 38A of the Principal Act is amended in subsection (1) by inserting "(other than its functions or objectives relating to postal services)" after "objectives".

National regulatory authority.

14.— The Commission shall be the national regulatory authority for the purposes of the Directive.

Public consultation process.

15.— (1) Where the Commission is required to conduct a public consultation process in the performance of any of its functions under the *Communications Regulation Acts 2002 to 2011* relating to postal services, the Commission shall carry out such process in accordance with procedures established and maintained by it.

(2) The procedures referred to in *subsection (1)* shall include the opportunity for interested persons, including representatives of postal service providers and postal service users and organisations representative of employees of postal service providers, to make representations on the matter, the subject of the consultation process concerned, to the Commission in such form and within such reasonable period as the Commission may specify generally or by reference to the consultation process concerned.

(3) The Commission shall publish a reference to the procedures referred to in *subsection (1)* in *Iris Oifigiúil* and shall make a copy of the procedures available, on request, to interested parties at a cost not exceeding the reasonable cost of making a copy or, where appropriate, such cost and the amount of any postage involved.

Chapter 3

Universal postal service

Universal postal service.

16.— (1) In this Part and subject to this section "universal postal service" means—

(*a*) that on every working day, except in such circumstances or geographical conditions as the Commission considers to be exceptional, there is at least—

(i) one clearance, and

(ii) one delivery to the home or premises of every person in the State or, as the Commission considers appropriate, under such conditions as it may determine from time to time, to appropriate installations,

and

(*b*) that the following services are provided:

(i) the clearance, sorting, transport and distribution of postal packets up to 2 kilograms in weight;

(ii) the clearance, sorting, transport and distribution of parcels up to the weight expressed in kilograms specified in *subsection (2)*;

(iii) the sorting, transportation and distribution of parcels from other Member States up to 20 kilograms in weight;

(iv) a registered items service;

(v) an insured items service within the State and to and from all countries which, as signatories to the Universal Postal Convention of the Universal Postal Union, declare their willingness to admit such items whether reciprocally or in one direction only; and

(vi) postal services, free of charge, to blind and partially-sighted persons.

(2) The weight in kilograms referred to in *subsection (1)(b)(ii)* shall be—

(*a*) such weight as stands specified by order under *subsection (3)*, or

(*b*) where no weight stands so specified, F1**[**10 kilograms**]**.

(3)(*a*) The Commission may, from time to time, review the weight provided for by *subsection (2)* and may, following a public consultation process and having regard to the reasonable needs of postal service users, by order provide for a weight in lieu of the weight provided for by *subsection (2)(a)* or the weight specified in *subsection (2)(b)* and such weight shall not in any case be less than 10 kilograms.

(*b*) The Commission may revoke an order under this subsection without providing for a weight, in which case the weight specified in *subsection (2)(b)* shall apply.

(4) The Commission shall publish notice of the making of an order under *subsection (3)* in *Iris Oifigiúil* and in such other manner as it considers appropriate.

(5) For the purpose of the provision of a universal postal service, the minimum and maximum dimensions for postal packets shall be those laid down in the Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union under the Universal Postal Convention, as amended from time to time.

(6) When considering any exception to the provision of a universal postal service for the purposes of *subsection (1)(a)*, the Commission shall have regard to the technical, economic and social environment and to the needs of postal service users.

(7) When making a determination for the purposes of *subsection (1)(a)(ii)*, the Commission shall have regard to—

(*a*) the reasonable needs of postal service users,

(*b*) the measures a universal postal service provider may be reasonably required to take in order to meet the reasonable needs of postal service users, and

(*c*) such other matters as the Commission considers appropriate, including ease of access to homes or premises and the health and safety of the employees and agents of a universal postal service provider.

(8) The Commission shall notify in writing any exception granted for the purposes of *subsection (1)(a)* or determination made for the purposes of *subsection (1)(a)(ii)* to—

(*a*) the Minister,

(*b*) the European Commission, and

(*c*) the national regulatory authorities in all Member States,

and shall publish any such exception granted or determination made.

(9) For the purposes of ensuring that the universal postal service develops in response to the technical, economic and social environment and to the reasonable needs of postal service users, the Commission shall, following a public consultation process, make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service.

(10) The Commission may, following a public consultation process, give directions to a universal postal service provider for the purpose of ensuring that, for the purpose of the provision of a universal postal service by the universal postal service provider concerned, the density of access points and the provision of points of contact for postal service users with the universal postal service provider take account of the reasonable needs of postal service users.

(11) The reference in *subsection (1)(a)(ii)* to the delivery of postal packets includes the delivery of postal packets posted outside the State.

(12) In this section—

"insured items service" means a postal service which, in the event of the loss or theft of or damage to a postal packet, provides, subject to the monetary limits specified in the terms and conditions of the service concerned, for the payment of an amount up to the value of the postal packet as declared by the sender;

"registered items service" means a postal service which provides—

(*a*) for the registration of a postal packet in connection with its transmission by post, and

(*b*) for the payment of an amount determined by the person providing the service in the event of theft or loss of or damage to such postal packet.

Annotations

Amendments:

F1 Substituted (10.04.2019) by *Communications Regulation (Universal Postal Services) Order 2019* (S.I. No. 150 of 2019), art. 2.

Editorial Notes:

E1 Power pursuant to subs. (9) exercised (1.05.2019) by *Communications Regulation (Universal Postal Service) (Amendment) Regulations 2019* (S.I. No. 149 of 2019).

E2 Power pursuant to subs. (3)(a) exercised (10.04.2019) by *Communications Regulation (Universal Postal Services) Order 2019* (S.I. No. 150 of 2019), art. 2.

E3 Power pursuant to subs. (9) exercised (1.01.2019) by *Communications Regulation (Universal Postal Service) (Amendment) (No. 2) Regulations 2018* (S.I. No. 534 of 2019), in effect as per reg. 1(3).

E4 Power pursuant to subs. (9) exercised (1.11.2012) by *Communications Regulation (Universal Postal Service) Regulations 2012* (S.I. No. 280 of 2012), in effect as per reg. 1(2).

E5 Previous affecting provision: power pursuant to subs. (9) exercised (1.01.2019) by *Communications Regulation (Universal Postal Service) (Amendment) Regulations 2018* (S.I. No. 499 of 2018), in effect as per reg. 1(3); revoked (1.01.2019) by *Communications Regulation (Universal Postal Service) (Amendment) (No. 2) Regulations 2018* (S.I. No. 534 of 2018), reg. 3(2), in effect as per reg. 1(3).

Chapter 4

Universal postal service provider

Designation of An Post as universal postal service provider.

17.— (1) Subject to *subsection (2)*, An Post is designated as the universal postal service provider for a period of 12 years beginning on the passing of this Act.

(2) After the expiration of 7 years after the passing of this Act, and following a review under *section 19* by the Commission of the designation of An Post under *subsection (1)*, the Commission may—

(*a*) decide to—

(i) continue the designation of An Post as a universal postal service provider for the duration of the unexpired period of the designation specified in *subsection (1)*, or

(ii) with the prior consent of the Minister, designate one or more than one postal service provider as a universal postal service provider for such period, subject to *section 18(4)*, as the Commission considers appropriate,

or

(*b*) with the prior consent of the Minister, decide that no such designation is required.

(3) Where the Commission proposes to make a decision under *subsection (2)(a)(ii)* or *(b)*, as the case may be, the Minister, following consultation with such persons as he or she considers appropriate having regard to the proposal concerned, shall give notice in writing to the Commission of his or her decision to consent, or to refuse consent, within 4 months of the date on which the Commission seeks consent.

(4) When giving or refusing consent in relation to a proposal by the Commission to make a decision under *subsection (2)(a)(ii)* or *(b)*, as the case may be, the Minister shall require to be satisfied as to whether or not the Commission's proposal ensures the provision of a universal postal service.

(5) Where the Minister refuses consent to a proposal by the Commission to make a decision under *subsection (2)(a)(ii)* or *(b)*, as the case may be, the designation of An Post shall continue for the duration of the unexpired period of the designation specified in *subsection (1)*.

(6) Where, with the prior consent of the Minister, the Commission makes a decision under *subsection (2)(a)(ii)*, the designation of An Post under *subsection (1)* shall cease to have effect on the date on which that decision takes effect.

(7) Where, with the prior consent of the Minister, the Commission makes a decision under *subsection (2)(b)*, the designation of An Post under *subsection (1)* shall cease to have effect on the date of that decision.

Designation of universal postal service providers — general provisions.

18.—(1) Before the end of the period for which the designation of An Post is continued under *subsection (2)(a)(i)* or *(5)* of *section 17* or, as the case may be, before the end of the period for which a universal postal service provider is designated under *subsection (2)(a)(ii)* of that section or, in a case where a universal postal service provider is designated under this section, before the end of the period for which the provider is so designated, the Commission—

(*a*) shall conduct a review of the designation, and

(*b*) may with effect from the expiry of that period—

(i) decide to designate one or more than one postal service provider as a universal postal service provider for such period, subject to *subsection (4)*, as the Commission considers appropriate, or

(ii) decide that no such designation is required.

(2) Where the Commission makes a decision—

(*a*) with the prior consent of the Minister, under *section 17(2)(b)*, or

(*b*) under *subsection (1)(b)(ii)*,

it shall, at such intervals as it considers appropriate, conduct a review under *section 19* for the purpose of deciding whether a designation of one or more than one postal service provider as a universal postal service provider is required and may decide that—

(i) no such designation is required for the time being, or

(ii) such designation is required for such period, subject to *subsection (4)*, as the Commission considers appropriate,

and this section applies to a decision made under *subparagraph (i)* or *(ii)*, as the case may be, as it applies to a decision made under *subparagraph (i)* or *(ii)* of *subsection (1)(b)*.

(3) The Commission may determine that different universal postal service providers, the subject of a designation made by the Commission under *section 17(2)(a)(ii)* or this section, shall provide different parts of the universal postal service or provide that service in respect of all or any part or parts of the State, or both, having regard to the need to ensure that there is no duplication of the obligations imposed on each universal postal service provider so designated.

(4) The designation of a universal postal service provider by the Commission under *section 17(2)(a)(ii)* or this section—

(*a*) shall be for such period as the Commission considers appropriate, having regard to the need to ensure that the designation is of sufficient duration for the return on investments,

(*b*) shall take effect 14 days after the date on which notice of approval of the terms and conditions of its universal postal service provision is published under *section 23(2)(a)*, and

(*c*) shall cease to have effect—

(i) on the date on which the designation of a universal postal service provider takes effect under *paragraph (b)*, or

(ii) on the date on which the Commission decides that no such designation is required.

Review by Commission.

19.— (1) A review by the Commission for the purposes of *section 17* or *18* shall, subject to *subsection (2)*, be conducted in accordance with such procedures as may be established and maintained by the Commission having regard to its functions and objectives under the *Communications Regulation Acts 2002 to 2011* relating to postal services, in particular the need to ensure the provision of a universal postal service and compliance with the requirements specified in *section 18*.

(2) The procedures referred to in *subsection (1)* shall—

(*a*) make provision for the carrying out of an assessment of the extent to which the market for the provision of postal services in the State is meeting the reasonable needs of postal service users,

(*b*) be such as the Commission considers to be efficient, objective, transparent, non-discriminatory and proportionate, and

(*c*) be published by the Commission.

Notification of designation.

20.— (1) The continuance of the designation of An Post under *subsection(2)(a)(i)* or *(5)* of *section 17* or, as the case may be, the designation of a universal postal service provider under *subsection (2)(a)(ii)* of that section, or the designation of a universal postal service provider under *section 18*, shall be in writing, and the Commission shall—

(*a*) publish notice of the such continuance or designation in *Iris Oifigiúil* and in such other manner as it considers appropriate, and

(*b*) notify in writing—

(i) the European Commission of such continuance or the identity of any universal postal service provider so designated, and

(ii) the Minister of the identity of any universal postal service provider so designated.

(2) Where the Commission makes a decision under *section 17(2)(b)* or *subsection (1)(b)(ii)* or *(2)(i)* of *section 18*, as the case may be, that no designation is required, it shall—

(*a*) publish notice of such a decision in *Iris Oifigiúil* and in such other manner as it considers appropriate, and

(*b*) notify in writing the Minister and the European Commission.

Designation subject to certain requirements.

21.— (1) A universal postal service provider is required—

(*a*) to provide a universal postal service in accordance with the obligations imposed on a universal postal service provider by or under the *Communications Regulation Acts 2002 to 2011*, subject to the interruption, suspension or restriction otherwise of all or any part of the universal postal service in cases of *force majeure*,

(*b*) to provide identical services to postal service users under comparable conditions, and

(*c*) to comply with the terms and conditions of its universal postal service provision published under *section 22* or *23*, as the case may be, and any amendments to or modifications of those terms and conditions under that section.

(2) Where the Commission is of the opinion that a universal postal service provider is failing, or has failed, to comply with any of the requirements of this section, the Commission may give a direction to the universal postal service provider to ensure compliance with the requirement concerned.

Terms and conditions of and charges made in respect of provision of universal postal service — An Post.

22.— (1) An Post shall—

(*a*) not later than 21 days after the coming into operation of this Act, give to the Commission a statement in writing of the terms and conditions of its universal postal service provision and the charges made by it in respect of the universal postal service provision (save in so far as those charges may otherwise be agreed between the universal postal service provider and a postal service user), and

(*b*) as soon as practicable after notification of the Commission under *paragraph (a)*, publish on its website and by such other means as the Commission may direct—

(i) the terms and conditions of its universal postal service provision, and

(ii) the charges referred to in *paragraph (a)*.

(2) The Commission shall, within 6 months of the coming into operation of this Act, approve, subject to *section 24(3)*, with or without amendment, the terms and conditions notified to it under *subsection (1)*.

Terms and conditions of and charges made in respect of provision of universal postal service — subsequent universal postal service providers.

23.— (1) Within such period as the Commission may specify in a designation made by it under *section 17(2)(a)(ii)* or *18*, but in any case not more than 3 months from the date of such designation, a universal postal service provider shall give to the Commission a statement in writing of—

(*a*) the terms and conditions of its universal postal service provision for approval by the Commission, subject to *section 24 (3)*, with or without amendment, and

(*b*) the charges made by it in respect of the universal postal service provision (save in so far as may otherwise be agreed between the universal postal service provider and a postal service user).

(2) When the terms and conditions are approved by the Commission, with or without amendment, a universal postal service provider shall publish on its website and by such other means as the Commission may direct—

(*a*) notice of the approval,

(*b*) the terms and conditions so approved, and

(*c*) the charges referred to in *subsection (1)(b)*.

(3) The terms and conditions approved under this section shall come into effect on a day that is not earlier than 14 days after the date of their publication under *subsection (2)(b)*.

Terms and conditions, charges — provisions of general application.

24.— (1) In this section—

"charges" means the charges published under *section 22* or *23* as the case may be;

"terms and conditions" means terms and conditions published under *section 22* or *23*, as the case may be.

(2) The terms and conditions shall be such as to ensure compliance with the obligations imposed on the universal postal service provider by or under the *Communications Regulation Acts 2002 to 2011* in respect of the provision of a universal postal service and shall include—

(*a*) the terms and conditions in accordance with which a postal service user may avail of the postal services concerned, and

(*b*) terms and conditions relating to, and its procedures for dealing with, complaints made by postal service users relating to the universal postal service provision.

(3) For the purposes of approving terms and conditions under *section 22(2)* or *23(1)*, the Commission shall consider whether the terms and conditions are appropriate having regard to the obligations imposed on the universal postal service provider by or under the *Communications Regulation Acts 2002 to 2011* in respect of the provision of a universal postal service and the reasonable needs of users and do not have a significantly adverse effect on postal service users.

(4) Where a universal postal service provider proposes to amend any of its terms and conditions it shall give at least 30 days notice, or such shorter period of notice as may be agreed with the Commission, in writing, to the Commission of its intention to make amendments and the Commission may, subject to *subsection (5)(a)* or *(b)*, as the case may be, approve those amendments, with or without amendment.

(5) The Commission may, following a public consultation process, give a direction to a universal postal service provider requiring it to modify its terms and conditions—

(*a*) where the Commission considers such modification is appropriate having regard to the obligations imposed on a universal postal service provider by or under the *Communications Regulation Acts 2002 to 2011* in respect of the provision of a universal postal service and the reasonable needs of postal service users, or

(*b*) where the Commission considers that a proposed amendment notified to it under *subsection (4)* may have a significantly adverse effect on postal service users.

(6) Where a universal postal service provider amends or modifies its terms and conditions pursuant to *subsection (4)* or *(5)*, as the case may be, it shall publish notice of the amendment or modification on its website and by such other means as the Commission may direct and the amendment or modification shall not come into effect earlier than 14 days after the date of publication of such notice or such other period as may be agreed with the Commission.

(7) The Commission may make a request in writing to a universal postal service provider to give to the Commission such additional information, and within such period, as the Commission specifies in its request, which period shall not be less than 14 days from the date of the request.

(8) Where a universal postal service provider amends the charges made by it in respect of the universal postal service provision, it shall—

(*a*) publish notice of any such amendment on its website and by such other means as the Commission may direct, and

(*b*) as soon as practicable thereafter notify the Commission in writing of the amendment,

and the charges as so amended shall not come into effect earlier than 14 days after the date of publication of the notice under *paragraph (a)*.

(9) A universal postal service provider shall make available to postal service users, on request, free of charge, and at such access points as it considers appropriate its terms and conditions and charges.

(10) References to technical standards in terms and conditions shall be read as references to those standards published in the Official Journal of the European Union as drawn up by the European Committee for Standardisation.

(11) Where the Commission is of the opinion that a universal postal service provider is failing, or has failed, to comply with any of the requirements of *section 22* or *23* or this section, the Commission may give a direction to the universal postal service provider to ensure compliance with the requirement concerned.

Transitional provision — An Post.

25.— (1) Subject to *subsection (2)*, notwithstanding the repeal by *section 4(1)* of sections 70 and 72 of the Act of 1983—

(*a*) schemes made by An Post under section 70 of the Act of 1983 that were in force immediately before the coming into operation of this Act, and

(*b*) regulations referred to in section 72 of the Act of 1983 that, by virtue of subsection (1) of that section, were in force immediately before the coming into operation of this Act,

shall continue in force.

(2) *Subsection (1)* ceases to apply—

(*a*) in the case of terms and conditions published under *section 22*, on and from the date of such publication, and

(*b*) in the case of charges published under *section 22*, on and from the date of such publication.

Limitation of liability of universal postal service provider.

26.— (1) Subject to *subsection (3)*, a universal postal service provider shall be immune from all liability in respect of any loss or damage suffered by a postal service user because of—

(*a*) any failure or delay in providing, operating or maintaining a universal postal service, or

(*b*) any failure, interruption, suspension or restriction of a universal postal service.

(2) The employees and agents of a universal postal service provider shall be immune from civil liability, except at the suit of the universal postal service provider, in respect of any loss or damage referred to in *subsection (1)*.

(3) Section 39 of the Sale of Goods and Supply of Services Act 1980 shall not apply in relation to the provision of a universal postal service by a universal postal service provider until such date as the Minister for Jobs, Enterprise and Innovation, following consultation with the Commission and the Minister, by order so provides, in relation to the universal postal service or to any part or parts of such service specified in the order in such manner and by reference to such matters, including ensuring the protection of the interests of postal service users, as the Minister for Jobs, Enterprise and Innovation, following such consultation, considers appropriate.

(4) An order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House has sat after that order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

Power to require carrying of postal packets and mail bags by ship or aircraft.

27.— (1) A universal postal service provider may, for any purpose in connection with the provision by it of a universal postal service, by notice require the owner or operator of a relevant ship or aircraft to carry mail bags on the relevant ship or aircraft.

(2) The remuneration for any services provided pursuant to this section shall be determined by agreement between the universal postal service provider and the owner or operator of the relevant ship or aircraft concerned.

(3) Where a dispute or difference arises between a universal postal service provider and the owner or operator of a relevant ship or aircraft, in respect of the remuneration for any services provided pursuant to this section, the dispute or difference shall be determined in accordance with conciliation procedures that have been agreed between both parties or, in default of such agreement, the matter may be referred to arbitration and, subject to section 29 of the Arbitration Act 2010, that Act shall apply to an arbitration under this Act.

(4) In this section "relevant ship or aircraft" means any ship or aircraft which carries on regular communications between 2 or more places, one of which is not readily accessible by road.

Tariff requirements.

28.— (1) The tariffs for each postal service or part of a postal service provided by a universal postal service provider in the provision of a universal postal service shall comply with the following requirements:

(*a*) prices shall be affordable and be such that all postal service users may avail of the services provided;

(*b*) prices shall be cost-oriented, that is to say, the prices shall take account of, and reflect the costs of, providing the postal service or part of the postal service concerned;

(*c*) subject to any decision made by the Commission under *paragraph (b)* of *subsection (2)*, prices shall comply with the uniform tariff referred to in that subsection;

(*d*) tariffs shall be transparent and non-discriminatory; and

(*e*) where postal service providers apply special tariffs, including special tariffs for postal services for businesses, bulk mailers or consolidators of mail from different postal service users, tariffs and associated conditions shall be transparent and non-discriminatory.

(2) (*a*) Subject to *paragraphs (b)* and *(d)*, a uniform tariff shall apply throughout the State to any postal service provided at single piece tariff.

(*b*) The Commission may, having regard to the reasonable needs of users, with the prior consent of the Minister, decide that a uniform tariff referred to in *paragraph (a)* shall not apply, and shall publish any such decision.

(*c*) The Commission may, with the prior consent of the Minister, make a decision that a uniform tariff shall be applied cross border to any postal service provided at single piece tariff and shall publish any such decision.

(*d*) The Commission may, with the prior consent of the Minister, revoke a decision made under *paragraph (b)* or *(c).*

(3) The application of a uniform tariff pursuant to *subsection (2)* shall not exclude the right of a universal postal service provider to conclude individual agreements on prices with postal service users.

(4) In this section "service provided at single piece tariff" means a postal service for which the tariff is set for individual postal packets by a universal postal service provider in its charges published under *section 22* or *23*, as the case may be.

(5) Where the Commission is of the opinion that a universal postal service provider is failing, or has failed, to comply with any of the requirements specified in *subsection (1)*, the Commission may give a direction to the universal postal service provider to ensure compliance with the requirement concerned.

Terminal dues and evasion of postage.

29.— (1) In order to ensure the cross-border provision of the universal postal service, a universal postal service provider shall ensure that its agreements on terminal dues for intra-Community cross-border mail comply with the following requirements:

(*a*) terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail;

(*b*) levels of remuneration shall be related to the quality of service achieved; and

(*c*) terminal dues shall be transparent and non-discriminatory.

(2) The Commission may, following a public consultation process, give a direction to a universal postal service provider to ensure compliance with the requirements specified in *subsection (1)*.

(3) (*a*) This subsection applies to a postal packet which—

(i) is posted outside the State,

(ii) is addressed to the addressee at an address in the State, and

(iii) purports to come from or to be sent by or on behalf of a person residing or carrying on business in the State,

but does not apply to a postal packet which purports to come from or to be sent by or on behalf of a person who carries on business both in and outside the State unless the postal packet purports to come or be sent only from an address, or all the addresses, of such person in the State.

(*b*) A universal postal service provider shall have the power to charge and recover from the person—

(i) from whom a postal packet to which this subsection applies purports to come, or

(ii) by whom or on whose behalf such postal packet purports to have been sent,

as a simple contract debt in any court of competent jurisdiction, the difference between the postage which would have been payable had the postal packet been posted in the State and the amount actually paid or payable to the universal postal service provider in respect of that postal packet posted outside the State to an address in the State and purporting to be sent by or on behalf of someone who is residing or carrying on business in the State unless terminal dues, which meet the requirements specified in *subsection (1)*, apply to that postal packet.

Price regulation.

30.—F2**[**...**]**

Annotations

Amendments:

F2 Repealed (21.03.2017) by *Communications Regulation (Postal Services) (Amendment) Act 2017* (3/2017), s. 1, S.I. No. 119 of 2017.

Universal postal service accounting obligations.

31.— (1) Where all or any of the conditions specified in *subsection (2)* are met, the Commission may give a direction providing for the keeping by a universal postal service provider, in its internal accounting system, of separate accounts for each service it provides—

(*a*) which is part of the universal postal service, and

(*b*) which is not part of the universal postal service.

(2) The conditions referred to in *subsection (1)* are as follows:

(*a*) that a sharing mechanism has been established under *section 36*;

(*b*) that the Commission is satisfied that a universal postal service provider is in receipt of State assistance;

(*c*) that the Commission is satisfied that competition in the market for postal services is not fully effective.

(3) A direction given under *subsection (1)* shall provide for—

(*a*) rules relating to the identification of costs,

(*b*) rules relating to the allocation of costs,

(*c*) rules relating to the use of internal cost accounting systems for the purposes of the matters referred to in *paragraphs (a)* and *(b)*,

(*d*) the verification by a statutory auditor or statutory audit firm of compliance with internal cost accounting systems,

(*e*) the publication of such accounts and other information relating to requirements under this section and such direction, as the Commission considers appropriate, subject to the protection of any information which the Commission considers confidential (within the meaning of section 24 of the Principal Act),

(*f*) the publication of a statement relating to compliance with this section and such direction, and

(*g*) such other matters relating to the requirements of this section and such direction, as the Commission considers appropriate.

(4) The Commission shall keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal postal service provider, and shall submit such information to the European Commission on request.

(5) A universal postal service provider shall make available in confidence to the European Commission, on request, detailed accounting information arising from its cost accounting systems.

(6) This section is in addition to, and not in substitution for, the provisions of the Companies Acts relating to the preparation of accounts and their audit.

Quality of service standards.

32.— (1) The Commission, following a public consultation process, shall draw up, and may from time to time revise, quality of service standards in relation to universal postal service provision by universal postal service providers (in this Part referred to as "quality of service standards"), other than intra-Community cross-border services.

(2) The quality of service standards shall be compatible with those laid down for intra-Community cross-border services in Annex II to the Directive, the text of which Annex is, for ease of reference, set out in *Schedule 3*.

(3) The quality of service standards shall include standards relating to—

(*a*) time permitted for delivery of postal packets, and

(*b*) the regularity and reliability of the postal services concerned.

(4) The Commission shall—

(*a*) publish, and

(*b*) notify the European Commission of,

the quality of service standards drawn up under *subsection (1)*.

(5) The Commission shall at least once in each year—

(*a*) monitor compliance with the quality of service standards, and

(*b*) publish a report on the results of the monitoring exercise conducted under *paragraph (a)*.

(6) The Commission may give a direction to a universal postal service provider to take corrective action where the Commission is of the opinion that the universal postal service provider—

(*a*) has not met the quality of service standards, or

(*b*) in the case of intra-Community cross-border services, has not met the objectives laid down in Annex II to the Directive.

(7) For the purpose of ensuring that the reasonable needs of postal service users are met, the Commission may give a direction to a universal postal service provider requiring it to publish information, in such form and manner and at such intervals as the Commission may direct, about the extent to which it is providing a universal postal service in accordance with quality of service standards.

(8) References to technical standards in any information published pursuant to any direction given under *subsection (7)* shall be read as references to those standards published in the Official Journal of the European Union as drawn up by the European Committee for Standardisation.

(9) The Commission may determine exemptions from the quality of service standards for intra-Community cross-border services referred to in *subsection (2)* where exceptional situations relating to infrastructure or geography so require and shall notify the European Commission immediately of any such exemption so determined.

Access to postal network of universal postal service provider.

33.— (1) A postal service provider has the right to enter into negotiations with a universal postal service provider with a view to concluding an agreement with that provider to access the postal network of the universal postal service provider and may serve notice on the Commission upon the commencement of any such negotiations.

(2) The Commission shall, if so requested by either party to the negotiations, specify the period within which the negotiations referred to in *subsection (1)* shall be completed.

(3) Where agreement is not reached within the period specified by the Commission under *subsection (2)*, the Commission shall take such steps as are necessary to resolve the dispute in accordance with the procedures referred to in *subsection (5)*.

(4) With regard to any intervention by the Commission under *subsection (2)* or *(3)*, the Commission may decide—

(*a*) not to intervene in the negotiations concerned, having carried out a preliminary examination of the matter, or

(*b*) to discontinue the intervention in those negotiations,

where the Commission considers that—

(i) the request for intervention is trivial or vexatious, or

(ii) the person making the request has not taken reasonable steps to reach an agreement on access to a universal postal service provider's postal network.

(5) The Commission shall make a decision in relation to a dispute referred to in *subsection (3)* in accordance with procedures established and maintained by it.

(6) The Commission shall publish the procedures referred to in *subsection (5)* and, on a request being made for that purpose, make the procedures available to a postal service provider free of charge.

(7) In making a decision in relation to a dispute, the Commission may impose or amend the conditions relating to access to a universal postal service provider's postal network and such conditions may include—

(*a*) the price of access,

(*b*) terms and conditions relating to matters other than price, and

(*c*) rules for the separation of accounts relating to access to the postal network,

and the Commission shall notify, in writing, the postal service provider and universal postal service provider concerned, as appropriate, of the reasons for such conditions.

(8) The Commission, in reaching a decision pursuant to the procedures referred to in *subsection (5)*, shall take into account—

(*a*) the reasonableness of the terms and conditions relating to access to the postal network concerned,

(*b*) the interests of postal service users,

(*c*) the need to ensure and maintain the efficient provision of a universal postal service,

(*d*) the availability of alternatives to the access sought,

(*e*) the development of competition in the market for postal services,

(*f*) the feasibility of granting the access sought,

(*g*) the capital investment in the postal network made by the universal postal service provider concerned, and

(*h*) any requirements imposed by any enactment.

(9) Where the Commission makes a decision with respect to the price of access to the postal network concerned it shall take into account any costs avoided by a universal postal service provider by granting such access and postal network costs of the universal postal service provider involved in granting such access.

(10) If, in making a decision under this section, the Commission imposes conditions for access to the universal postal service provider's postal network, and it appears to the Commission that a postal service provider or a universal postal service provider to whom the decision relates is failing, or has failed, to comply with any of those conditions, the Commission may give a direction to the postal service provider or universal postal service provider concerned, or both as the case may be, to ensure compliance with the condition concerned.

Access to postal infrastructure.

34.— (1) In this section "postal infrastructure" includes—

(*a*) physical infrastructure, such as post office boxes and delivery boxes, and

(*b*) infrastructure in non-physical form, such as postcodes or addresses or arrangements made with others for the provision of any service.

(2) Subject to *subsection (3)*, the Commission may give a direction to a universal postal service provider requiring it to permit access to other postal service providers to its postal infrastructure on such conditions as the Commission may direct for that purpose.

(3) The Commission may give a direction under *subsection (2)* where it considers that it is necessary for either or both of the following purposes:

(*a*) to protect the interests of postal service users;

(*b*) to promote effective competition.

Chapter 5

Financial support for universal postal service provision

Net cost of provision of universal postal service.

35.— (1) A universal postal service provider, designated under *section 17* or *18*, which seeks to receive funding for the net costs (if any) of providing a universal postal service may submit a request in writing to the Commission.

(2) A request under *subsection (1)* shall be—

(*a*) made in such form and manner as the Commission determines,

(*b*) submitted no earlier than after the end of the first financial year immediately following the designation under *section 17* or *18* and thereafter no later than 6 months after the accounts for the financial year concerned have been audited, unless the Commission agrees otherwise, and

(*c*) accompanied by such supporting information as may reasonably be required by the Commission for the purposes of *subsection (4)*.

(3) Where a request is made under *subsection (1)*, the Commission may require, in writing, the universal postal service provider concerned to give to the Commission such additional information as the Commission specifies in the requirement for the purposes of *subsection (4)* within 21 days from the date of the requirement or such longer period as the Commission may specify.

(4) The Commission shall, on the basis of the information given to it under *subsection (2)* and any additional information given to the Commission under *subsection (3)*, determine whether the provision of a universal postal service by the universal postal service provider concerned—

(*a*) represents a net cost to the universal postal service provider in the period to which the request made under *subsection (1)* relates, taking into account any market benefit which accrues to the universal postal service provider, calculated in accordance with Annex I to the Directive, the text of which Annex is, for ease of reference set out in *Schedule 4* , and

(*b*) in the opinion of the Commission, represents an unfair financial burden on the universal postal service provider.

(5) For the purpose of making a determination under *subsection (4)*, the Commission shall—

(*a*) take into account—

(i) the methodology used by the universal postal service provider with respect to the information given to the Commission under this section,

(ii) the extent to which the universal postal service provider is, in the Commission's opinion, complying with the obligations imposed on it by or under the *Communications Regulation Acts 2002 to 2011* relating to the provision of a universal postal service in a cost-efficient manner, and

(iii) any other information which the Commission considers relevant,

and

(*b*) as appropriate—

(i) audit or verify, or

(ii) appoint a person possessing, in the opinion of the Commission, the requisite qualifications and degree of independence from the universal postal service provider, to audit or verify,

the calculation of the net cost referred to in *subsection (4)*.

(6) The Commission shall, subject to the protection of any information which it considers confidential (within the meaning of section 24 of the Principal Act), publish the conclusions of any audit or verification undertaken pursuant to *subsection (5)(b)*.

(7) The Commission shall notify the universal postal service provider in writing of its determination as soon as practicable.

(8) Where the Commission determines that the universal postal service provision does not represent an unfair financial burden it shall notify the universal postal service provider of the reasons for the determination as soon as practicable after the determination is made.

Annotations

Editorial Notes:

E6 *Communications Regulation (Financing of Provision of Universal Postal Service) Regulations 2013* (S.I. No. 469 of 2013) apply (4.12.2013) to applicable undertakings following any determination by the Commission under subs. (4)(b) that the net cost of provision of the universal postal service represents an unfair financial burden on the universal postal service provider concerned, as per the 2013 Regulations, reg. 3.

Financing of provision of universal postal service.

36.— (1) Where the Commission makes a determination under *section 35* that the net cost of provision of a universal postal service represents an unfair financial burden on the universal postal service provider concerned it shall apportion the net cost among providers of postal services within the scope of the universal postal service and such providers shall make a contribution, in accordance with the cost apportioned to each of them, for the purposes of meeting that burden.

(2) The assessment, apportionment, collection and distribution to the universal postal service provider concerned of contributions referred to in *subsection (1)* shall be carried out in accordance with a mechanism (in this Part referred to as a "sharing mechanism") provided for in regulations made by the Commission.

(3) The contributions referred to in *subsection (1)* shall be paid into a fund (in this section referred to as the "fund") established for that purpose by regulations made by the Commission and maintained and, subject to *subsection (8)*, accounted for in accordance with those regulations.

(4) The regulations referred to in *subsections (2)* and *(3)* may provide for—

(*a*) the sharing mechanism and fund to be administered—

(i) by the Commission, or

(ii) by a person specified in the regulations, appointed on such terms and conditions as the Commission determines, possessing, in the opinion of the Commission, the requisite degree of independence from a universal postal service provider and the postal service providers referred to in *subsection (1)* and who shall be under the supervision of the Commission,

and

(*b*) the making of contributions to the fund by a particular class or description of postal service providers referred to in *subsection (1)*.

(5) In making regulations under *subsections (2)* and *(3)* for the purposes of this section, the Commission shall ensure that the sharing mechanism operates—

(*a*) in an objective, proportionate and transparent manner, and

(*b*) in a manner that does not involve or tend to give rise to any undue discrimination against—

(i) particular postal service providers or a particular class or description of postal service providers, or

(ii) particular postal service users or a particular class or description of postal service users.

(6) Any amount payable by way of a contribution pursuant to regulations made under *subsections (2)* and *(3)* that remains unpaid may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate for the time being standing specified in section 26 of the Debtors (Ireland) Act 1840, on the amount or part thereof remaining unpaid in respect of the period between the date when the amount or part thereof fell due and the date of payment of such amount or part.

(7) Where a sharing mechanism is established, the Commission shall, subject to the protection of any information which it considers confidential (within the meaning of section 24 of the Principal Act), publish an annual report—

(*a*) setting out the calculated net cost of the provision of a universal postal service audited or verified, as the case may be, under *section 35(5)(b)*, and

(*b*) including information relating to the performance of the fund and the total amount of contributions collected and distributed from the fund to the universal postal service provider concerned during the period to which the annual report relates.

(8) The Commission shall—

(*a*) cause to be kept all proper and usual accounts relating to such fund as may be established pursuant to regulations made under *subsection (3)*, and

(*b*) as soon as may be after the end of each financial year, submit the accounts to the Comptroller and Auditor General for audit and those accounts when so audited shall, together with—

(i) the report of the Comptroller and Auditor General thereon, and

(ii) a report of the Commission to the Minister in relation to the performance of its functions relating to the fund in the previous year,

be presented as soon as may be after the end of the financial year to the Minister, who shall cause copies of the accounts and the reports referred to in *subparagraphs (i)* and *(ii)* to be laid before each House of the Oireachtas.

Annotations

Editorial Notes:

E7 Power pursuant to subs. (2) exercised (4.12.2013) by *Communications Regulation (Financing of Provision of Universal Postal Service) Regulations 2013* (S.I. No. 469 of 2013).

Chapter 6

Regulation of Postal Service Providers

Postal services within scope of universal postal service.

37.— (1) A postal service is within the scope of the universal postal service (in this Part referred to as a "postal service within the scope of the universal postal service") if—

(*a*) the service is within the description of the universal postal service set out in *section 16*,

(*b*) the service would be within the description of the universal postal service set out in *section 16* but for the fact that—

(i) in the case of a service consisting of the clearance and delivery of postal packets, the clearance or delivery is not made on every working day as required by *section 16 (1) (a)*,

(ii) the service is not provided throughout the State, or

(iii) the service is not provided at an affordable price in accordance with a uniform tariff applicable throughout the State pursuant to *section 28 (2)*,

or

(*c*) the postal service is of a kind that, having regard to postal service users, could reasonably be said to be interchangeable with a service of a description set out in *section 16*,

but does not include a document exchange or express or courier services.

(2) The Commission shall, not later than 3 months after the passing of this Act, publish guidelines concerning postal services within the scope of the universal postal service to which persons shall have regard when making a notification under *section 38*, in particular concerning—

(*a*) whether a postal service has the characteristics set out in *section 16(1)* or would have these characteristics if it were offered on the days specified in *section 16(1)(a)* throughout the State,

(*b*) whether a postal service has characteristics that postal service users may reasonably perceive it to be interchangeable with a service of a description set out in *section 16*, and

(*c*) the characteristics of the postal service itself, including the value added features, intended use and price.

(3) In this section a reference to a postal service includes a part of a postal service.

(4) In this section "document exchange" means provision of means, including the supply of premises specifically for that purpose and transportation by a third party, allowing self-delivery by mutual exchange of postal packets between persons subscribing to this service.

Authorisation to provide a postal service.

38.— (1) A person who intends to provide a postal service shall, before doing so, having regard to the guidelines published by the Commission under *section 37*, make a notification to the Commission in accordance with this section of his or her intention to provide such a service.

(2) In the case of a person who is providing a postal service immediately before the passing of this Act, before the expiration of 1 month after the publication of guidelines by the Commission under *section 37*, the person shall make a notification to the Commission in accordance with this section in respect of the postal service concerned.

(3) A notification made under *subsection (1)* or *(2)* shall be in such form as the Commission determines and shall include—

(*a*) the name of the person and, in the case of a body corporate that is a company, the company registration number,

(*b*) the business address of the person and, in the case of a body corporate that is a company, where that address differs from the address of its registered office, the address of its registered office,

(*c*) particulars identifying one or more persons who may be contacted,

(*d*) a short description of the postal service concerned and the geographical scope of that service,

(*e*) where relevant, the estimated date of commencement for the postal service concerned,

(*f*) a declaration under *subsection (6)*, and

(*g*) such other information as the Commission considers appropriate.

(4) Upon receipt by the Commission of a notification made under *subsection (1)* or *(2)*, the person making the notification is deemed to be a postal service provider authorised to provide the postal service concerned, subject to the conditions specified in *section 39* applicable to that service.

(5) A person or postal service provider who makes a notification under *subsection (1)* or *(2)* shall notify the Commission in such form and manner as the Commission may determine of any changes to the information given under *subsection (3)*—

(*a*) in relation to the matters referred to in *paragraphs (a)* to *(d)* and *(g)* of *subsection (3)*, within 14 days from such change, and

(*b*) in the case of a notification made under *subsection (1)*, in relation to the matters referred to in *subsection (3)(e)* and *(f)*, before commencement of the postal service concerned.

(6) The declaration referred to in *subsection (3)(f)* shall—

(*a*) be made in such form and manner as the Commission determines,

(*b*) be made by the person making the notification, and

(*c*) state whether the postal service concerned is, or is not, within the scope of the universal postal service.

(7) A person who—

(*a*) fails to comply with *subsection (1)*, *(2)* or *(5)*, or

(*b*) makes a notification or a declaration which is to his or her knowledge false or misleading in any material respect,

commits an offence and is liable on summary conviction to a class A fine.

(8) (*a*) In this subsection "Regulations of 2002" means the European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002).

(*b*) Notwithstanding the revocation of the Regulations of 2002 by *section 4 (2)*, the obligations applying by virtue of the Regulations of 2002 to a person to whom a postal service authorisation (within the meaning of those Regulations) has been granted under Regulation 7 of those Regulations shall continue to apply until the date on which that person makes a notification to the Commission under *subsection (2)*.

(*c*) References in any enactment to a person authorised under Regulation 7 of the Regulations of 2002 shall, after the date referred to in *paragraph (b)*, be read

as references to a postal service provider deemed to be authorised under this section.

(9) The Commission shall have regard to the need to keep the burden of compliance with this section on persons making a notification to the Commission under *subsection (1)* or *(2)* to the minimum possible consistent with the purpose, and the effective enforcement of, this section.

Conditions of authorisation.

39.— (1) Subject to *subsection (2)*, an authorisation is subject to compliance by the postal service provider concerned with the obligations imposed on it by or under the *Communications Regulation Acts 2002 to 2011* and, in particular, compliance with the following:

(*a*) the provision of complaints and redress procedures in accordance with *section 43*;

(*b*) the provision to the Commission of such information as the Commission may require pursuant to section 13F of the Principal Act.

(2) An authorisation to provide a postal service within the scope of the universal postal service is subject to compliance with the following conditions:

(*a*) the conditions specified in *subsection (1)*;

(*b*) payment of the amount of such levy as may be imposed on postal service providers pursuant to section 30(2) of the Principal Act;

(*c*) where a sharing mechanism and fund is established under *section 36*, the payment of the contribution (if any) payable by the postal service provider concerned pursuant to that section to such fund, and

(*d*) the provision to the Commission of such information relating to its turnover from the provision by it of services within the scope of the universal postal service as the Commission may reasonably require for either or both of the following purposes:

(i) the imposition of a levy pursuant to section 30(2) of the Principal Act;

(ii) the assessment and apportionment to be carried out pursuant to *section 36* in relation to the contribution (if any) to be made by the postal service provider to such fund as may be established under that section.

(3) Where the Commission is of the opinion that a postal service provider is failing, or has failed, to comply with any of the conditions of authorisation imposed by this section, the Commission may, subject to *section 41*, give a direction to the postal service provider to ensure compliance with the condition concerned.

Register of postal service providers.

40.— (1) The Commission shall establish and maintain a register of persons who have made a notification to the Commission pursuant to *section 38* and such information contained in the notification as the Commission considers appropriate (other than information which the Commission considers confidential within the meaning of section 24 of the Principal Act) shall be entered in the register.

(2) The Commission may, as occasion requires, amend or delete an entry in the register.

(3) Members of the public may inspect the register free of charge at all reasonable times and may take copies of, or extracts from, entries in the register at a cost not exceeding the reasonable cost of making a copy.

(4) In any proceedings, a certificate, bearing the seal of the Commission, stating that the register shows that on the date or during the period specified in the certificate the name of the person identified by the certificate was not entered in the register,

is admissible as evidence of the fact that a person identified by the certificate did not make a notification to the Commission pursuant to *section 38*.

(5) A document purporting to be a certificate under *subsection (4)* is deemed to be such a certificate, unless the contrary is shown.

Suspension or withdrawal of authorisation.

41.— (1) Where the Commission considers that there is or has been serious or repeated non-compliance by a postal service provider with the conditions imposed on it under *section 39* the Commission may decide, having considered any representations made to it, to suspend or withdraw its authorisation.

(2) Where the Commission proposes to suspend or withdraw an authorisation, the Commission shall notify the postal service provider in writing of the proposal and the reasons therefor and shall specify in the notice the period (which in any case shall not be less than 28 days) within which the postal service provider may make representations, in such form and manner as the Commission specifies in the notice.

(3) Where the Commission, having considered the representations (if any) made by or on behalf of the postal service provider in accordance with *subsection (2)*, decides to suspend or withdraw the authorisation, the Commission shall notify the postal service provider in writing of the decision.

Withdrawal of postal services.

42.— (1) Subject to *subsection (5)*, a postal service provider providing a postal service within the scope of the universal postal service shall give to the Commission at least 3 months' prior notice in writing of its intention to withdraw such service.

(2) A postal service provider shall take all reasonable steps to ensure that the postal service users concerned are informed of its intention to withdraw a service the subject of a notice to the Commission under *subsection (1)* in order to mitigate any adverse effect of the withdrawal on postal service users.

(3) The Commission may give a direction to a postal service provider for the purposes of *subsection (2)*.

(4) A person who fails to comply with *subsection (1)* commits an offence and is liable on summary conviction to a class A fine.

(5) This section does not apply to a universal postal service provider in the provision of a universal postal service.

Complaints and redress procedures.

43.— (1) Every postal service provider shall draw up and implement a code of practice setting out procedures, standards and policies with respect to the handling of complaints from postal service users, in particular, complaints relating to loss, theft, damage or quality of service, and such a code of practice shall make provision for the following matters—

(*a*) the first point of contact for complainants,

(*b*) a means of recording complaints,

(*c*) a time frame within which the postal service provider concerned shall respond to complaints,

(*d*) procedures for resolving disputes,

(*e*) remedies and redress, including reimbursement or compensation, or both, as appropriate,

(*f*) procedures for determining where responsibility lies in cases where more than one postal service provider is involved,

(*g*) retention of records of complaints for such period, of not less than one year, as the Commission may specify following the resolution of the complaint, including—

(i) copies of the complaint and any response thereto, and

(ii) any determination in respect of the complaint and any documentation considered in the course of such determination,

and

(*h*) any other matters the Commission considers necessary and appropriate to secure effective protection for postal service users.

(2) A postal service provider shall publish the code of practice drawn up under *subsection (1)* and, on a request being made for that purpose, make the code of practice available, on request, to postal service users free of charge.

(3) The Commission, or a person appointed by the Commission, possessing, in the opinion of the Commission, the requisite degree of independence from the postal service provider concerned, may, in accordance with procedures established and maintained by the Commission, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice drawn up under *subsection (1)* and, in this regard, the Commission may issue directions to a postal service provider requiring the postal service provider to comply with such measures as it, or such person as may be appointed by the Commission under this subsection, may specify for the resolution of the dispute including payment of costs in the case where such a person is appointed, and reimbursement of payments or compensation, or both reimbursement of payments and compensation, as appropriate, in accordance with the provisions of the code of practice relating to the matters specified in *subsection (1)(e)*.

(4) The Commission shall publish any procedures established by it pursuant to *subsection (3)* and any amendments thereto.

(5) The procedures referred to in *subsections (1)* and *(3)* shall be—

(*a*) transparent,

(*b*) simple,

(*c*) inexpensive, and

(*d*) enable disputes to be settled fairly and promptly.

(6) The Commission may give directions to a postal service provider to whom *subsection (1)* relates for the purposes of ensuring compliance with this section including directions as to—

(*a*) the form and manner in which a code of practice referred to in *subsection (1)* and information relating thereto shall be published, including information on the number of complaints made and the manner in which they have been dealt with, and

(*b*) the making of such alterations or additions to its code of practice as the Commission considers appropriate and specifies in the directions.

(7) A person may, where the dispute involves postal service providers in more than one Member State, request the Commission to co-ordinate its efforts with any relevant regulatory authority in another Member State with a view to bringing about a resolution of the dispute.

(8) Where the Commission is of the opinion that a postal service provider is failing, or has failed, to comply with any of the requirements of this section, the Commission

may give a direction to the postal service provider concerned to ensure compliance with the requirement concerned.

Amendment of section 30 of Principal Act (levies and fees).

44.— Section 30 of the Principal Act is amended—

(*a*) by substituting the following for subsection (2)—

"(2) Subject to subsection (11A), for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions relating to postal services the Commission may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service.",

(*b*) in subsection (3) by inserting "referred to in subsection (2)" after "provider of postal services", and

(*c*) by inserting the following after subsection (11):

"(11A) (*a*) A levy imposed pursuant to subsection (2) shall be imposed in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges to the Commission.

(*b*) For the purposes of paragraph (*a*) and having regard to—

(i) its objectives under section 12(1)(*c*),

(ii) the impact of the levy on postal service providers, and

(iii) the need to minimise any distortion or restriction of competition in the market for the provision of the postal services concerned,

the Commission may make a determination that such class or classes of postal service provider referred to in subsection (2) are exempt from an order made under that subsection.".

Protection of whistleblowers.

45.— (1) Section 24A of the Principal Act is amended—

(*a*) in subsection (1) by substituting "an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider" for "an undertaking, an associate of an undertaking or an association of undertakings",

(*b*) in subsection (2) by substituting "an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider" for "an undertaking or an associate of an undertaking or an association of undertakings",

(*c*) in subsection (2) by substituting the following for paragraph (*a*):

"(*a*) the conduct relates to the provision of—

(i) an electronic communications network or service or an associated facility, or

(ii) a postal service,

and",

and

(*d*) in subsection (5) by substituting "an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider" for "an undertaking, an associate of an undertaking or an association of undertakings".

(2) Section 24B of the Principal Act is amended by substituting the following for subsection (1)—

"(1) If an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider causes detriment to a person because the person or a third person has made, or threatened to make, an appropriate disclosure of information to the Commission or a law enforcement authority (such as the Garda Síochána) about the conduct of the undertaking, the associate, the association or the postal service provider, the person has a right of action in tort against the undertaking, associate, association or postal service provider, as the case may be.".

(3) Section 24C of the Principal Act is amended by substituting "an undertaking, an associate of an undertaking, an association of undertakings or a postal service provider" for "an undertaking, an associate of an undertaking or an association of undertakings".

Chapter 7

Inviolability of mails, etc.

Inviolability of mails and immunity from prosecution.

46.— (1) Postal packets and mail bags in the course of transmission by post shall be immune from examination, detention or seizure, except as provided under this Part or any other enactment.

(2) A universal postal service provider and employees and agents of a universal postal service provider shall be immune from prosecution for the possession, carrying or delivery of anything prohibited by virtue of any enactment which is contained in a postal packet in the course of transmission by post.

Powers as to the transmission of postal packets.

47.— (1) A postal service provider may refuse, detain, defer, withhold, return or dispose of any postal packet—

(*a*) which does not comply with—

(i) its terms and conditions as to the transmission of postal packets, or

(ii) with the provisions of this Part,

or

(*b*) if the postal service provider knows or reasonably suspects that such postal packet is being sent in contravention of *section 55*.

(2) The detention or disposal by a postal service provider of any postal packet on the grounds of a contravention of any terms and conditions applicable to its transmission by post or of *section 55* shall not exempt the sender from any proceedings which might have been taken if the postal packet had been delivered.

(3) A postal service provider may open postal packets that are—

(*a*) undeliverable,

(*b*) awaiting collection *poste restante* and not collected,

(*c*) due for collection and not collected, or

(*d*) not in compliance with its terms and conditions for the transmission of postal packets,

and the name and the address of the sender cannot be ascertained.

(4) For the purposes of *subsection (3) (a)*, a postal packet is considered to be undeliverable if it cannot be delivered through want of a true direction, or by reason that the addressee is dead, or cannot be found, or has refused the same, or has refused or neglected to pay any charges thereon, or for any other sufficient reason.

Power to detain postal packets.

48.— (1) In this section "relevant goods" means—

(*a*) any goods chargeable with any duty or tax on importation or exportation which has not been paid or secured, or

(*b*) any goods in the course of importation, exportation or removal into or out of the State contrary to any prohibition or restriction for the time being in force by virtue of any enactment.

(2) A postal service provider who suspects that a postal packet may contain relevant goods shall—

(*a*) detain such postal packet, and

(*b*) forward the postal packet to the Revenue Commissioners.

(3) This section shall come into operation on such day as the Minister may appoint by order.

Chapter 8

Evidential provisions

Evidential provisions in relation to postage.

49.— (1) The amount of any postage or any other sum due and payable by a person to a universal postal service provider in connection with the provision of a universal postal service may be recovered from the person as a simple contract debt by the universal postal service provider concerned in any court of competent jurisdiction.

(2) The mark of a universal postal service provider or a foreign postal service provider of any sum on a postal packet as due in respect of that postal packet shall, unless the contrary is shown, be sufficient proof in any legal proceedings of the liability of the postal packet to the sum so marked.

(3) In any proceedings for the recovery of postage or any other sum due and payable in respect of a postal packet, the production of the postal packet concerned with a stamp or other mark on it of a universal postal service provider, made in connection with the provision of a universal postal service, or of a foreign postal service provider, indicating that the postal packet—

(*a*) has been refused or rejected,

(*b*) is unclaimed, or

(*c*) cannot for any other reason be delivered,

shall, unless the contrary is shown, be sufficient proof of the fact indicated.

(4) In any proceedings pursuant to this section, a certificate purporting to be signed by a universal postal service provider stating that a specified sum is due by a specified person in respect of the provision of any universal postal service by the universal postal service provider, shall be evidence of the matters so stated without further proof unless the contrary is shown.

(5) In any proceedings pursuant to this section, the person from whom any postal packet in respect of which any such postage or other sum is sought to be recovered purports to have come shall, unless the contrary is shown, be taken to be the sender of the postal packet.

Evidence of thing being a postal packet.

50.— For the purposes of proceedings for an offence under this Part, evidence that any article is in the course of transmission by post, or has been accepted by a postal service provider for transmission by post, shall be sufficient evidence that the article is a postal packet.

Chapter 9

Enforcement

Directions and compliance.

51.— (1) This section applies to a direction given by the Commission under any of the provisions of this Part to a universal postal service provider or a postal service provider, as the case may be (in this section referred to as a "direction").

(2) The Commission may, as it considers appropriate, having regard, amongst other matters, to the reasonable needs of postal service users, publish a direction.

(3) A direction shall—

(*a*) be in writing,

(*b*) be addressed to the universal postal service provider or postal service provider concerned, and

(*c*) state the reasons on which it is based.

(4) Where the Commission is of the opinion that a universal postal service provider or postal service provider, as the case may be, has not complied, or is not complying, with a direction, the Commission shall give notice to the universal postal service provider or postal service provider, in writing, stating the reasons for such opinion and giving the universal postal service provider or postal service provider the opportunity to make representations or remedy any non-compliance, as specified in the notice, not later than—

(*a*) 4 weeks from the date of the notice,

(*b*) such period of less than 4 weeks as may be agreed by the Commission and the postal service provider concerned or stipulated by the Commission in the case of repeated non-compliance, or

(*c*) such other period as the Commission considers appropriate in the circumstances.

(5) The Commission shall consider any representations which are made under *subsection (4)*.

(6) (*a*) The Commission may amend or revoke a notice given under this section and shall notify the postal service provider in writing accordingly.

(*b*) This section applies to a notice amended under this subsection as it applies to a notice given under *subsection (4)*.

(7) Where, at the end of the period specified in a notice given under *subsection (4)*, the Commission is of the opinion that a universal postal service provider or a postal service provider has not complied, or is not complying, with a direction, the Commission may apply to the High Court for an order requiring the universal postal service provider or postal service provider to comply with such direction (in this section referred to as a "compliance order"). Such an application is to be by motion.

(8) The High Court may hear the application under *subsection (7)* only if it is satisfied that a copy of the application has been served on the universal postal service provider or postal service provider concerned.

(9) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under *subsection (7)*. The Court may not refuse interim or interlocutory relief merely because the Commission may not suffer damage if relief were not granted pending determination of the application.

(10) On the hearing of an application made under *subsection (7)* the High Court may make a compliance order or may refuse the application.

(11) (*a*) An application made under *subsection (7)* for a compliance order may include an application for an order directing the universal postal service provider or postal service provider to pay to the Commission a financial penalty of such amount as is proposed by the Commission having regard to the circumstances of the non-compliance concerned.

(*b*) In deciding an application for a compliance order made under *subsection (7)*, the High Court, having regard to the circumstances surrounding the non-compliance concerned, may order the universal postal service provider or postal service provider to pay to the Commission a financial penalty of such amount as is specified in the order which shall not in any case be more than the amount proposed by the Commission in its application pursuant to *paragraph (a)*.

(*c*) The circumstances referred to in *paragraph (b)* include the following:

(i) the duration of the non-compliance;

(ii) the effect of the non-compliance on postal service users and other universal postal service providers or postal service providers;

(iii) the submissions of the Commission with respect to what it considers the appropriate amount, and

(iv) any excuse or explanation for the non-compliance provided by the universal postal service provider or postal service provider.

Appeals to High Court.

52.— (1) In this section "decision" means—

(*a*) a decision made by the Commission under *section 17(2)*, *18(1)(b)* or *(2)*, *28(2)*, *30(2)*, *(5)* or *(9)*, *33(4)* or *(5)* or *41(1)*,

(*b*) a determination made by the Commission under *section 16(1)(a)(ii)*, *18(3)*, *32(9)* or *35(4)* or section 30(11A)(*b*) (inserted by *section 44*) of the Principal Act, or

(*c*) a direction given by the Commission under *section 16(10)*, *24(5)*, *31(1)*, *32(7)*, *34(2)*, *42(3)* or *43(3)* or *(6)*.

(2) A user or postal service provider (in this section referred to as the "appellant") whose interests are materially affected by a decision may, not later than 28 days after the user or postal service provider has been notified of the decision, appeal to the High Court against that decision.

(3) An appeal under this section shall be made in such manner as is prescribed by rules of court of the High Court or as the High Court may direct.

(4) Notice of an appeal and the grounds for it shall be given by the appellant to the Commission in such manner as is prescribed by rules of court of the High Court or as the High Court may direct.

(5) The High Court shall hear and determine an appeal under this section and may make such orders as it considers appropriate.

(6) The orders that may be made by the High Court on the hearing of an appeal under this section include—

(*a*) an order affirming or setting aside the decision in whole or in part, and

(*b*) an order remitting the matter to be decided again by the Commission in accordance with the directions of the Court.

(7) Subject to *subsection (8)*, an appeal under this section does not—

(*a*) affect the operation of the decision appealed against, or

(*b*) prevent the taking of action to implement the decision, unless the High Court otherwise orders.

(8) (*a*) Where an appeal is made under this section against a decision, the High Court may make such order staying or otherwise affecting the operation or implementation of the decision, or a part of that decision, as the Court considers appropriate, pending the hearing of the appeal.

(*b*) If an order is in force under *paragraph (a)* (including an order that has previously been varied on one or more than one occasion under this paragraph), the High Court may make a further order varying or revoking the order.

(*c*) An order in force under *paragraph (a)* (including an order that has previously been varied on one or more than one occasion under *paragraph (b)*)—

(i) is subject to such conditions as are specified in the order, and

(ii) has effect until—

(I) if a period for the operation of the order is specified in the order, the expiry of that period or, if the appeal is determined before the end of that period, the making of the determination, or

(II) if no period is so specified, the giving of a decision on the appeal.

(9) The determination of the High Court on the hearing of an appeal under this section is final, except that, by leave of the High Court, an appeal on a specified question of law shall lie to the Supreme Court.

Chapter 10

Offences in relation to postal services

Prohibition on opening of postal packets and mail bags.

53.— (1) A person commits an offence if he or she, without the agreement of the addressee and, in the case of a person who is a postal service provider or an employee or agent of a postal service provider, contrary to his or her duty, intentionally—

(*a*) delays, detains, interferes with or opens, a postal packet addressed to another person or does anything to prevent its delivery or authorises, suffers or permits another person (who is not the addressee) to do so,

(*b*) discloses the existence or contents of a postal packet referred to in *paragraph (a)*, or

(*c*) uses for any purpose any information obtained from a postal packet referred to in *paragraph (a)*.

(2) A person commits an offence if he or she, without reasonable excuse and, in the case of a person who is a postal service provider or an employee or agent of a postal service provider, contrary to his or her duty, intentionally opens a mail bag.

(3) A person who commits an offence under this section is liable—

(*a*) on summary conviction, to a class C fine or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €75,000 or imprisonment for a term not exceeding 5 years or both.

(4) This section does not apply to any person who is acting—

(*a*) pursuant to any of the powers as to the transmission of postal packets set out in *section 47*,

(*b*) pursuant to a direction given by the Minister under section 110 of the Act of 1983, as applied by *section 54*, or

(*c*) under other lawful authority.

Ministerial directions to postal service providers.

54.— (1) Subject to *subsection (2)*, references to the company in section 110 of the Act of 1983, in so far as that section relates to An Post, shall be read as references to a postal service provider.

(2) Without prejudice to the application of section 110 of the Act of 1983 to An Post, that section applies, in respect of other postal service providers, only for the purposes of *section 53* and the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

(3) The Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 is amended—

(*a*) in paragraph (*a*)(ii) of the definition of "interception" in section 1 by substituting "an offence under *section 53* of the *Communications Regulation (Postal Services) Act 2011*" for "an offence under section 84 of that Act",

(*b*) in section 9(3) by substituting "a postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2011*)" for "An Post",

(*c*) in section 10(1)(*a*) by substituting "*section 53* of the *Communications Regulation (Postal Services) Act 2011* or section 98 of the Act of 1983" for "section 84 or 98 of the Act of 1983",

(*d*) in section 10(2)(*a*) by substituting "*section 53(4)* of the *Communications Regulation (Postal Services) Act 2011* or section 98(2) of the Act of 1983" for "section 84(2) or 98(2) of the Act of 1983", and

(*e*) in section 10(2)(*d*)(ii) by substituting "a postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2011*)" for "An Post".

(4) Section 110 of the Act of 1983 is amended—

(*a*) in subsection (6) by substituting "Subject to subsection (8), a person who" for "A person who", and

(*b*) by inserting the following after subsection (7):

"(8) In the case of An Post and any other postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2011*), subsection (6) applies only in respect of non-compliance by An Post or any such postal service provider, as the case may be, with directions issued under this section for the purposes of *section 53* of the *Communications Regulation (Postal Services) Act 2011* and the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.".

Prohibition on sending certain articles by post.

55.— (1) A person commits an offence if he or she sends by post any postal packet—

(*a*) which encloses any creature, article or thing of any kind, including any explosive, noxious or otherwise dangerous substance, likely to injure—

(i) any other postal packet in the course of its transmission by post, or

(ii) any employee or agent of a postal service provider,

(*b*) which encloses any article or thing whatsoever which is indecent, obscene, grossly offensive or menacing, or

(*c*) which has on the postal packet or its cover, any words, marks or designs which are of an indecent, obscene, grossly offensive or menacing character.

(2) A person who commits an offence under this section is liable—

(*a*) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €75,000 or to imprisonment for a term not exceeding 5 years or both.

(3) *Subsection (1) (a)* does not apply to postal packets which enclose anything permitted to be sent (whether generally or specifically) by the postal service provider concerned, provided that such postal packets are sent in compliance with the terms and conditions of that postal service provider.

Obstruction of a universal postal service provider.

56.— (1) A person commits an offence if he or she without reasonable excuse—

(*a*) obstructs or interferes with a universal postal service provider or an employee or agent of a universal postal service provider in the execution of his or her duty in connection with the provision of all or any part of a universal postal service, or

(*b*) while in any post office or related premises, obstructs or interferes with the course of business of a universal postal service provider in connection with the provision of all or any part of a universal postal service.

(2) A person commits an offence if, without reasonable excuse, he or she fails to leave a post office or related premises when required to do so by an employee or agent of a universal postal service provider who reasonably suspects the first-mentioned person of committing an offence under *subsection (1)* and the first-mentioned person may be removed by that employee or agent.

(3) A person who commits an offence under *subsection (1)* or *(2)* is liable on summary conviction to a class E fine.

(4) In this section "related premises" means any premises belonging to a post office or used together with a post office.

Prohibition on interference with post boxes.

57.— (1) A person who intentionally and without lawful excuse inserts any item other than a postal packet into a post box commits an offence and is liable—

(*a*) on summary conviction, to a class C fine or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €75,000 or imprisonment for a term not exceeding 5 years or both.

(2) A person who intentionally interferes with the exterior of a post box, except with the prior consent of the postal service provider concerned, commits an offence

and is liable on summary conviction to a class C fine or imprisonment for a term not exceeding 12 months or both.

Secretion of a postal packet.

58.— An employee or agent of a postal service provider who for any purpose whatsoever, without reasonable excuse, secretes a postal packet in the course of transmission by post, commits an offence and is liable on summary conviction to a class C fine or imprisonment for a term not exceeding 12 months or both.

Amendment of section 43 of Principal Act (prosecution of summary offences by Commission).

59.— Section 43 of the Principal Act is amended—

(*a*) by substituting the following for subsection (2):

"(2) Subsection (1) does not apply to a prosecution for an offence under—

(*a*) section 53(2),

(*b*) the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003),

(*c*) the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003), or

(*d*) *section 53*, *55*, *56(2)*, *57* or *58* of the *Communications Regulation (Postal Services) Act 2011*.",

and

(*b*) by inserting the following after subsection (2):

"(3) (*a*) In this subsection "relevant offence" means an offence under—

(i) section 13C(2) or (5), 13D(2) or (5), 13F(5), 24(3), 38C, 38D, 38E, 39(6) or 45(2) of this Act,

(ii) section 13 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, or

(iii) *section 38(7)*, *42(4)*, *56(1)* or *(2)*, *57(2)* or *58* of the *Communications Regulation (Postal Services) Act 2011*.

(*b*) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for a relevant offence may be instituted within 12 months from the date on which the offence was committed.".

Amendment of section 44 of Principal Act (notice by Commission of intention to prosecute, etc.).

60.— Section 44 of the Principal Act is amended in subsection (1) by inserting "(other than an offence under *section 53*, *55*, *56(2)*, *57* or *58* of the *Communications Regulation (Postal Services) Act 2011*)" after "this Act".

Chapter 11

Regulation of provision of free postage to candidates

Provision of free postage to candidates.

61.— (1) In this section—

"designation order" means an order made by the Minister for Public Expenditure and Reform under *subsection (2)*;

"relevant postal service provider" means—

(*a*) where no designation order is made, An Post, or

(*b*) where a designation order is made, the person so designated,

in relation to the provision of free postage to candidates pursuant to all or any of the following provisions:

F3**[**(i) section 28A of the Seanad Electoral (University Members) Act 1937;**]**

(ii) section 57 of the Electoral Act 1992;

(iii) section 32 of the Presidential Elections Act 1993;

(iv) rule 22 of Part 1 of the Second Schedule to the European Parliament Elections Act 1997.

(2) The Minister for Public Expenditure and Reform, after consultation with the Minister for Environment, Community and Local Government, may by order designate one or more than one person to be a relevant postal service provider (in this section referred to as a "designation order").

(3) (*a*) The terms and conditions applying to the provision of free postage to candidates pursuant to all or any of the provisions specified in *subparagraphs (i)* to *(iv)* of the definition of "relevant postal service provider" in *subsection (1)* shall be agreed by the Minister for Public Expenditure and Reform and the relevant postal service provider concerned, after consultation with the Minister for the Environment, Community and Local Government and, where appropriate, the Minister for Defence.

(*b*) The appropriate sum payable, pursuant to the terms and conditions referred to in *paragraph (a)*, from the Central Fund, or the growing produce of that Fund, to a relevant postal service provider shall be authorised by the Minister for Finance at the request of the Minister for Public Expenditure and Reform.

(4) Notwithstanding the repeal of section 74 of the Act of 1983 by *section 4(1)*, schemes made under the said section 74 and in force immediately before the passing of this Act shall continue in force until the date on which such designation order as may be made comes into operation.

(5) Every designation order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the designation order is passed by either such House within the next 21 days on which the House has sat after that designation order is laid before it, the designation order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

Annotations

Amendments:

F3 Substituted (29.12.2015) by *Electoral (Amendment) Act 2015* (62/2015), s.1(4), commenced on enactment.

Amendments to Seanad Electoral (University Members) Act 1937.

62.— (1) Section 3 of the Seanad Electoral (University Members) Act 1937 is amended by inserting the following definition:

" 'relevant postal service provider' has the meaning assigned to it by *section 61* of the *Communications Regulation (Postal Services) Act 2011*.".

(2) Section 5 of the Seanad Electoral (University Members) Act 1937 is amended—

(*a*) by renumbering the existing provision as subsection (1) of that section, and

(*b*) by inserting the following after subsection (1):

"(2) The expenses incurred by reason of this Act by a relevant postal service provider (whether such expenses relate to the exercise by candidates at elections of the right of free postage conferred by section 25 of this Act or are otherwise so incurred in relation to a Seanad election) shall, to such extent as may be authorised by the Minister for Finance at the request of the Minister for Public Expenditure and Reform, be paid out of the Central Fund or the growing produce thereof.".

Amendments to Electoral Act 1992.

63.— (1) Section 2(1) of the Electoral Act 1992 is amended by inserting the following definition:

" 'relevant postal service provider' has the meaning assigned to it by *section 61* of the *Communications Regulation (Postal Services) Act 2011*;".

(2) Section 4(2) of the Electoral Act 1992 is amended by substituting "a relevant postal service provider" for "An Post".

(3) Section 57 of the Electoral Act 1992 is amended—

(*a*) in subsection (1) by substituting "*section 61* of the *Communications Regulation (Postal Services) Act 2011*" for "such conditions as may be specified under section 74 of the Postal and Telecommunications Services Act, 1983",

(*b*) in subsection (2)(*b*) by substituting "the relevant postal service provider" for "An Post", and

(*c*) in subsection (3) by substituting "the relevant postal service provider" for "An Post".

Amendments to Presidential Elections Act 1993.

64.— (1) Section 3(1) of the Presidential Elections Act 1993 is amended by inserting the following definition:

" 'relevant postal service provider' has the meaning assigned to it by *section 61* of the *Communications Regulation (Postal Services) Act 2011*;".

(2) Section 5(2) of the Presidential Elections Act 1993 is amended by substituting "a relevant postal service provider" for "An Post".

(3) Section 32 of the Presidential Elections Act 1993 is amended—

(*a*) in subsection (1) by substituting "*section 61* of the *Communications Regulation (Postal Services) Act 2011*" for "such conditions as may be specified under section 74 of the Postal and Telecommunications Services Act, 1983",

(*b*) by substituting the following for subsection (3):

"(3) The relevant postal service provider may permit a candidate to exercise the right aforesaid before the candidate is entitled under subsection (2) so to do upon the candidate giving such security as may be required by the relevant postal service provider for the payment of the postage on all communications

sent by the candidate under this section in the event of the candidate not becoming so entitled to exercise the said right.",

and

(*c*) in subsection (4) by substituting "the relevant postal service provider" for "An Post".

Amendments to European Parliament Elections Act 1997.

65.— (1) Section 2(1) of the European Parliament Elections Act 1997 is amended by inserting the following definition:

" 'relevant postal service provider' has the meaning assigned to it by *section 61* of the *Communications Regulation (Postal Services) Act 2011*;".

(2) Section 4(2) of the European Parliament Elections Act 1997 is amended by substituting "a relevant postal service provider" for "An Post".

(3) The Second Schedule to the European Parliament Elections Act 1997 is amended in rule 22—

(*a*) in paragraph (1) by substituting "*section 61* of the *Communications Regulation (Postal Services) Act 2011*" for "such conditions as may be specified under section 74 of the Postal and Telecommunications Services Act, 1983", and

(*b*) in paragraph (2) by substituting "the relevant postal service provider" for "An Post".

PART 3

The National Postcode System

F4[Interpretation

65A. (1) In this Part—

F5[...]

F6['Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016[42] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);]

'end user' means a person who has entered into an end user contract with a postcode contractor or a value added reseller;

'end user contract' means a contract entered into between the postcode contractor or a value added reseller and an end user pursuant to which the postcode contractor or the value added reseller supplies a value added service to the end user;

'legitimate postcode activity' shall be construed in accordance with *subsection (2)*;

'national postcode system' has the meaning assigned to it by *section 66(1)*;

F7['personal data' means personal data within the meaning of the Data Protection Regulation;]

'personalised data' is information (other than a postcode, a geo-coordinate, an address or a variation of an address) associated to a postcode in a postcode database that:

[42] OJ No. L 119, 4.5.2016, p.1

(a) is unique to a property and is associated in the postcode database concerned to the postcode corresponding to the address of that property, unless such information is lawfully and publicly available or accessible;

(b) is associated directly or indirectly in the postcode database concerned to the name of a person;

(c) is unique to an owner or occupier of property and is directly or indirectly associated in the postcode database concerned to the postcode corresponding to the address of that property;

'postcode' has the meaning assigned to it by *section 66(1)*;

'postcode contractor' means the person with whom the Minister has entered into a contract under *section 66(2)*;

'postcode database' means any database established and maintained by the postcode contractor or a value added reseller that contains or includes postcodes;

'privacy notice' shall be construed in accordance with *section 66B*;

F7**[**'processing' means processing within the meaning of the Data Protection Regulation;**]**

'universal postal service provider' has the meaning assigned to it by *section 6(1)*;

'value added reseller' means the holder of a value added reseller licence;

'value added reseller licence' means a licence between the postcode contractor and a value added reseller, that authorises the value added reseller to supply a value added service in respect of a postcode database;

'value added service' means the supply by a value added reseller to an end user of a postcode database or a product or service that uses or is derived from a postcode database.

(2) For the purposes of this Part, each of the following is a legitimate postcode activity:

(a) the development, implementation or maintenance by the Minister or the postcode contractor of the national postcode system;

(b) the association of a geo-coordinate or address (including any variation of an address) to a postcode by the Minister or the postcode contractor for the purposes of the development, implementation or maintenance of the national postcode system;

(c) the dissemination (including through the processing of personal data controlled by An Post, a universal postal service provider or such other person as the Minister considers appropriate), on behalf of either the postcode contractor or the Minister, of a postcode to its corresponding address by An Post, a universal postal service provider or such other person as the Minister considers appropriate;

(d) the matching (in this paragraph referred to as a 'matching service') for a person (in this paragraph referred to as a 'matching service end user') by the Minister, the postcode contractor or a value added reseller of an address (including variation of an address) to a postcode, or to a geo-coordinate associated to a postcode provided that—

(i) the information provided by the matching service end user to the Minister, postcode contractor or value added reseller for the purposes of obtaining the matching service is limited to one or more of the following:

(I) the address (including a variation of the address);

(II) an identifier of the property, other than the name of a person;

(III) such other information (other than the name of a person) specified by the Minister as appropriate to be provided,

and

(ii) the Minister, contractor or value added reseller does not provide to the matching service end user the name of any person owning or occupying the property in question;

(e) the inclusion within a postcode database by the Minister, postcode contractor or a value added reseller of a variation of an address obtained from a person who owns or occupies the property to which the address relates, or from an end user;

(f) the creation or management by the Minister, postcode contractor or a value added reseller of a postcode database that—

(i) does not include personalised data, or

(ii) includes personalised data with the consent of the person concerned;

(g) the licensing to a value added reseller by the Minister or postcode contractor, or the licensing to an end user by a postcode contractor or a value added reseller, of a postcode database that—

(i) does not include personalised data, or

(ii) includes personalised data with the consent of the person concerned;

(h) the supply by a value added reseller to an end user of a value added service to the extent that the value added service uses or is derived from a postcode database where such database—

(i) does not include personalised data, or

(ii) includes personalised data with the consent of the person concerned;

(i) such other activities as the Minister may, after consultation with the Minister for Justice and Equality and the Data Protection Commissioner, prescribe by regulations, having regard to the development, implementation and maintenance of the national postcode database and the rights of owners and occupiers of property.**]**

Annotations

Amendments:

F4 Inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(a), S.I. No. 337 of 2015.

F5 Deleted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 217(a)(i), S.I. No. 174 of 2018.

F6 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 217(a)(ii), S.I. No. 174 of 2018.

F7 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 217(a)(iii), (iv) S.I. No. 174 of 2018.

The national postcode system.

66.— (1) In this section—

"national postcode system" has the meaning given to it by *subsection (2)*;

"postcode" means a code consisting of numbers or other characters or both numbers and other characters that identifies the locality of an address and, where appropriate, the geographic location of an address;

"public body" means—

(*a*) a Department of State,

(*b*) a local authority,

(*c*) a body established by any enactment.

(2) The Minister may, with the prior consent of the Minister for Public Expenditure and Reform, enter into a contract with one or more than one person for the development, implementation and maintenance of a system (in this section referred to as the "national postcode system") for the allocation, dissemination and management of postcodes for the purposes of, or relating to, the provision of postal services and the use of the national postcode system by other persons for such other purposes as the Minister considers appropriate.

(3) The contract referred to in *subsection (2)* shall specify the terms and conditions relating to the development, implementation and maintenance of the national postcode system and, in particular, shall specify—

(*a*) the conditions subject to which postcodes may be made available,

(*b*) the conditions relating to the protection of intellectual property rights, and

(*c*) the conditions (including conditions as to the making of charges) subject to which the national postcode system may be made available to any person who may wish to use it.

(4) While the contract referred to in *subsection (2)* remains in force, the person or persons with whom the Minister so contracts shall provide such information as the Minister requires for the purposes of this section.

(5) Nothing in *subsection (3)* shall be read so as to prevent—

(*a*) the sharing of the national postcode system with public bodies free of charge for the purposes of the performance of their functions,

(*b*) the requirement, subject to such terms and conditions as the contract may specify, for the adoption of a differential charging policy for commercial and non-commercial use of the national postcode system by other persons.

F8[Regulations

66A. (1) The Minister may, by regulations, specify such conditions to be attached to a value added reseller licence granted by a postcode contractor as he or she considers necessary to ensure that the privacy of the owners and occupiers of property in respect of which a postcode has been allocated is safeguarded.

(2) Without prejudice to the generality of subsection (1), regulations made in accordance with that subsection may—

(a) F9[...]

(b) require that such licence contain a provision that it may be suspended or terminated by the postcode contractor whenever so directed by the Minister, and

(c) require that an audit of the books and records of a value added reseller be carried out at such time and in such form and made in such manner as the Minister or, as the case maybe, the postcode contractor so directs.

(3) Regulations under this Part may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(4) Every regulation made under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.**]**

Annotations

Amendments:

F8 Inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(b), S.I. No. 337 of 2015.

F9 Deleted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 217(b), S.I. No. 174 of 2018.

F10**[**Privacy notice

66B. The postcode contractor and a value added reseller shall each publish a notice (in this Part referred to as a 'privacy notice') on their respective websites containing the following:

(a) an explanatory note on the background and origin of postcodes,

(b) particulars of the source and types of data included in the relevant postcode database,

(c) in the case of the postcode contractor, a list of value added resellers to whom the postcode contractor has granted a value added reseller licence,

(d) information regarding the entitlement of owners and occupiers of property to have any data rectified or erased, and

(e) information regarding the entitlement to make a complaint to the postcode contractor.**]**

Annotations

Amendments:

F10 Inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(b), S.I. No. 337 of 2015.

F11**[**Personal data protection

66C. (1) Nothing in this Part shall be construed as authorising the processing of personal data contrary to the provisions of F12**[**the Data Protection Regulation and the Data Protection Act 2018**]**.

F12**[**(2) Article 21 (Right to object) of the Data Protection Regulation shall not apply to processing of personal data that is required for the purposes of carrying out legitimate postcode activity.**]]**

Annotations

Amendments:

F11 Inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(b), S.I. No. 337 of 2015.

F12 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 217(c), S.I. No. 174 of 2018.

F13**[**Complaints procedures

66D. (1) The postcode contractor shall draw up procedures for dealing with complaints by an owner or occupier of property, (in this section referred to as 'the complainant') relating to the use of postcodes by the postcode contractor or a value added reseller and shall publish details of the procedures on the internet.

(2) The postcode contractor may decide not to deal with a complaint where the complaint is, in its opinion, trivial, vexatious or frivolous or not made in good faith.

(3) A complainant shall comply with all reasonable requests for information by the postcode contractor in carrying out an investigation into a complaint received by it.

(4) A complaint shall be submitted by the complainant in writing to the postcode contractor.

(5) The postcode contractor shall notify the complainant concerned in writing of the reasons for its decision.

(6) The postcode contractor shall prepare and submit an annual report to the Minister in relation to—

(a) the number and type of complaints and their resolution,

(b) any decision by the postcode contractor not to deal with a complaint, and

(c) any other information the postcode contractor considers appropriate.

(7) The Minister may, by regulations, make provision for the following:

(a) the procedure to be followed in investigating complaints;

(b) the requirements to be complied with by complainants;

(c) the remedies and redress available to complainants;

(d) any other matters the Minister considers necessary or appropriate to secure the effective protection of complainants.**]**

Annotations

Amendments:

F13 Inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(b), S.I. No. 337 of 2015.

F14**[**Code of practice

66E. (1) The postcode contractor shall prepare and submit to the Minister for his or her approval a draft code of practice regarding the retention of data related to postcode databases.

(2) In preparing a draft code of practice under *subsection (1)*, the postcode contractor shall consult with the Data Protection Commissioner and such other persons or bodies as the postcode contractor considers appropriate or as the Minister may direct.

(3) The Minister may approve, refuse to approve, or after consultation with the postcode contractor, amend the draft code of practice.

(4) A draft code of practice shall, if approved by the Minister under *subsection (3)*, be published (including publication on the website of the postcode contractor) and shall apply and have effect in accordance with its terms.**]**

Annotations

Amendments:

F14 Inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(b), S.I. No. 337 of 2015.

PART 4

Amendments to Broadcasting Act 2009

Definition (*Part 4*).

67.— In this Part "Act of 2009" means the Broadcasting Act 2009.

Amendment of section 118 of Act of 2009 (principal objects and associated powers of TG4).

68.— Section 118 of the Act of 2009 is amended by substituting the following for subsection (9):

"(9) Each amount paid to TG4 under section 123(4) shall be used by TG4 solely for the purposes of—

(*a*) pursuing its public service objects, and

(*b*) paying amounts levied on TG4 under section 33.".

Amendment of section 123 of Act of 2009 (allocation of public funding).

69.— Section 123 of the Act of 2009 is amended—

(*a*) by substituting the following for subsection (1):

"(1) The Minister, with the approval of the Minister for Public Expenditure and Reform, may pay to RTÉ and TG4 out of monies provided by the Oireachtas, in respect of each financial year beginning with the financial year commencing on 1 January 2011, an amount equal to the total of the receipts in that year in respect of television licence fees apportioned to RTÉ and TG4 as the Minister determines in accordance with subsection (1A) less—

(*a*) any expenses certified by the Minister as having been incurred by him or her in that year in relation to the collection of those fees, and

(*b*) any amount paid under section 156(2).",

(*b*) by inserting the following after subsection (1):

"(1A) (*a*) The Minister shall, after consultation with the Minister for Public Expenditure and Reform, determine the portion of the amount referred to in subsection (1) to be paid to RTÉ and TG4 respectively.

(*b*) When making a determination for the purposes of paragraph (*a*), the Minister shall have regard to the ability of RTÉ and TG4 to fulfil their public service objects.",

and

(*c*) by inserting the following after subsection (2):

"(2A) The amount paid to TG4 in each financial year under subsection (1), shall be used by TG4 solely for the purposes of—

(*a*) pursuing its public service objects, and

(*b*) paying amounts levied on TG4 under section 33.".

Amendment of section 124 of Act of 2009 (recommendations as to changes to public funding).

70.— Section 124 of the Act of 2009 is amended in subsection (5) by substituting "and the amounts of any payments to be made to TG4 under section 123" for "and the amount of any payment to be made to TG4 under section 123(4)".

Amendment of section 145 of Act of 2009 (issue of television licences by agent).

71.— Section 145 of the Act of 2009 is amended by inserting the following after subsection (14):

"(15) (*a*) The Department of Social Protection shall pay to the Minister such an amount as is determined by the Minister, in consultation with the Minister for Public Expenditure and Reform and the Minister for Social Protection, in respect of each licence (if any) issued in accordance with the scheme referred to in subsection (12).

(*b*) In making a determination for the purposes of paragraph (*a*), the Minister shall have regard to the ability of RTÉ and TG4 to meet their public service objects.

(16) The Department of Social Protection shall maintain and furnish such data and information, and in such format (including electronic formats), as the Minister, following consultation with the Minister for Social Protection, may require in relation to the exercise of powers conferred on the Department of Social Protection under this Part.".

Amendment of section 154 of Act of 2009 (broadcasting funding scheme).

72.— Section 154 of the Act of 2009 is amended in subsection (1) by substituting the following for paragraph (*e*)—

"(*e*) the development of archiving of programme material for all or any of the descriptions of programme specified in paragraphs (*a*), (*b*), (*c*), (*d*) and (*f*), including technological and system developments for the purposes of enhancing the availability of and access to archived programme material, and".

Section 4.

SCHEDULE 1

Repeals and Revocations

PART 1

Repeals

Item	Session and Chapter or Number and Year	Short Title	Extent of repeal
(1)	(2)	(3)	(4)
1	1 & 2 Vict., c. 98	Railways (Conveyance of Mails) Act 1838	The whole Act.
2	10 & 11 Vict., c. 85	Post Office (Duties) Act 1847	The whole Act.
3	31 & 32 Vict., c. 119	Regulation of Railways Act 1868	Sections 36 and 37.
4	36 & 37 Vict., c. 48	Regulation of Railways Act 1873	Sections 18, 19 and 20.
5	38 & 39 Vict., c. 63	Sale of Food and Drugs Act 1875	Section 16.
6	56 & 57 Vict., c. 38	Conveyance of Mails Act 1893	Sections 2 and 3.
7	8 Edw. 7, c. 48	Post Office Act 1908	Sections 5, 7, 8, 9, 19, 20, 21, 22, 26, 27, 28, 29, 30, 32, 44, 48, 51, 53, 53A, 55, 57, 61, 62, 63, 64, 65, 66, 67 (in so far as it relates to An Post or officers of An Post), 68, 69, 70(3), 72, 74, 75, 78, 79, and 81.
8	No. 40 of 1936	Air Navigation and Transport Act 1936	Section 67.
9	No. 7 of 1937	Post Office (Evasion of Postage) Act 1937	The whole Act.
10	No. 21 of 1944	Transport Act 1944	Section 53(1)(c).
11	No. 17 of 1951	Post Office (Amendment) Act 1951	Sections 9(3) and 12.
12	No. 19 of 1958	Transport Act 1958	Section 3.
13	No. 24 of 1983	Postal and Telecommunications Services Act 1983	Sections 5(2), 64, 66, 70 (in so far as it relates to schemes as respects the provision of postal services), 71, 72, 74, 75, 82, 83 and 84.

PART 2

Revocations

Item (1)	Number and year (2)	Citation (3)	Extent of revocation (4)
1	S.I. No. 616 of 2002	European Communities (Postal Services) Regulations 2002	The whole instrument.
2	S.I. No. 135 of 2008	European Communities (Postal Services) (Amendment) Regulations 2008	The whole instrument.

Section 5.

SCHEDULE 2

AMENDMENTS TO OTHER ENACTMENTS

Item (1)	Session & Chapter or Number and year (2)	Short title (3)	Amendment (4)
1	8 Edw. 7, c. 48	Post Office Act 1908	(*a*) In section 73(1) delete "mail bag, postal packet," in each place where it occurs. (*b*) In section 89 substitute the following for the definition of the expression "mail bag": "The expression 'mail bag' has the same meaning as in the *Communications Regulation (Postal Services) Act 2011*:". (*c*) In section 89 substitute the following for the definition of the expression "postal packet": "The expression 'postal packet' has the same meaning as in the *Communications Regulation (Postal Services) Act 2011*:". (*d*) In section 89 substitute the following for the definition of the expression "post office": "The expression 'post office' has the same meaning as in the *Communications Regulation (Postal Services) Act 2011*:". (*e*) In section 89 substitute the following for the definition of the expression "post office letter box": "The expression 'post office letter box' shall be construed as a reference to a post box within the meaning of the *Communications Regulation (Postal Services) Act 2011*:".
2	No. 17 of 1925	Firearms Act 1925	In section 19 substitute references to an employee of a postal service provider for references to an officer of An Post.

Item (1)	Session & Chapter or Number and year (2)	Short title (3)	Amendment (4)
3	No. 2 of 1956	Gaming and Lotteries Act 1956	In section 49(1) substitute "A postal service provider" for "An Post".
4	No. 26 of 1980	Ombudsman Act 1980	In Part 1 of the First Schedule substitute the following for "An Post": "An Post (other than an action taken in the performance of its functions relating to the provision of postal services within the meaning of the *Communications Regulation (Postal Services) Act 2011*)".
5	No. 24 of 1983	Postal and Tele-communications Services Act 1983	(*a*) In section 3 substitute "made by the Minister or the Minister for Finance under this Act" for "made by the Minister, the Minister for Finance or the Minister for Trade, Commerce and Tourism under this Act or made by the postal company under section 84". (*b*) In section 4(1) delete paragraph (*d*). (*c*) In section 4(1)(*f*) delete "84,". (*d*) In section 5(4) delete paragraph (*a*). (*e*) In section 5(6) delete "84,".
6	No. 20 of 2002	Communications Regulation Act 2002	(*a*) In section 13(7) insert the following after paragraph (*a*): "(*aa*) a postal service provider who is deemed to be authorised in accordance with *section 38* of the *Communications Regulation (Postal Services) Act 2011*, or". (*b*) In section 13(7)(*b*) substitute "individual undertakings, postal service providers or persons" for "individual undertakings or persons". (*c*) In section 60 substitute "under Part 5" for "under this Part". (*d*) In Part 1 of Schedule 1 delete paragraph (4)(*b*). (*e*) In Part 2 of Schedule 1 delete paragraph (36).
7	No. 2 of 2005	Criminal Justice (Terrorist Offences) Act 2005	(*a*) In paragraph 10 of Part 1 of Schedule 2 delete subparagraph (*d*). (*b*) In paragraph 10 of Part 1 of Schedule 2 substitute the following for subparagraph (*e*): "(*e*) *section 55* of the *Communications Regulation (Postal Services) Act 2011*

Item	Session & Chapter or Number and year	Short title	Amendment
(1)	(2)	(3)	(4)
			(prohibition on sending certain articles by post);".
			(*c*) In paragraph 6 of Part 2 of Schedule 6 substitute the following for subparagraph (*c*):
			"(*c*) *section 55* of the *Communications Regulation (Postal Services) Act 2011* (prohibition on sending certain articles by post).".

Section 32.

SCHEDULE 3

QUALITY STANDARDS FOR INTRA-COMMUNITY CROSS-BORDER MAIL

The quality standards for intra-Community cross-border mail in each country are to be established in relation to the time limit for routing measured from end-to-end * for postal items of the fastest standard category according to the formula **D + n**, where **D** represents the date of deposit ** and **n** the number of working days which elapse between that date and that delivery to the addressee.

Quality standards for Intra-Community cross-border mail.

Time Limit	Objective
D + 3	85% of items
D + 5	97% of items

The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between two Member States.

Section 35.

SCHEDULE 4

GUIDANCE ON CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE

Part A: *Definition of the universal service obligations.*

* End-to-end routing is measured from the access point to the network to the point of delivery to the addressee.

** The date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the following day of collection.

Universal service obligations refer to the obligations referred to in Article 3 placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially-sighted persons.

Those obligations may include, among others, the following:

— a number of days of delivery, superior to those set in this Directive,

— accessibility to access points, in order to satisfy the universal service obligations,

— the tariffs affordability of the universal service,

— uniform prices for universal service,

— the provision of certain free services for blind and partially-sighted persons.

Part B: *Calculation of net cost.*

National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently.

The net cost of universal service obligations is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations.

The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.

Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service provider.

The calculation is to be based upon the costs attributable to:

(i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A;

(ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the

national regulatory authority. The universal service provider(*s*) shall cooperate with the national regulatory authority to enable it to verify the net cost.

Part C: *Recovery of any net costs of universal service obligations.*

The recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions. As such compensation involves financial transfers, Member States have to ensure that they are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result as far as possible in the least distortion to competition and to user demand.

A sharing mechanism based on a fund referred to in Article 7(4) should use a transparent and neutral mechanism for collecting contributions that avoids a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund.

Number 21 *of* 2011

COMMUNICATIONS REGULATION (POSTAL SERVICES) ACT 2011

REVISED

Updated to 10 April 2019

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Communications Regulation Acts 2002 to 2017: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Communications Regulation (Postal Services) (Amendment) Act 2017* (3/2017), s. 3(3)). The Acts in this group are:

- *Communications Regulation Act 2002* (20/2002)
- *Communications Regulation (Amendment) Act 2007* (22/2007)
- *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010)
- *Communications Regulation (Postal Services) Act 2011* (21/2011), other than ss. 62-65 and Part 4
- *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015)
- *Communications Regulation (Postal Services) (Amendment) Act 2017* (3/2017)

Seanad Electoral (University Members) Acts 1937 to 2015: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Electoral (Amendment) Act 2015* (62/2015), s. 6(2)). The Acts in this group are:

- *Seanad Electoral (University Members) Act 1937* (30/1937)
- *Electoral (Amendment) Act 1972* (4/1972), s. 2
- *Electoral (Amendment) Act 1973* (3/1973), in so much as it amends the Seanad Electoral (University Members) Acts 1937 to 1973
- *Electoral (Amendment) Act 2001* (38/2001), in so far as it relates to Seanad elections
- *Electoral (Amendment) Act 2006* (33/2006), in so far as it relates to Seanad elections
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011), s. 34
- *Communications Regulation (Postal Services) Act 2011* (21/2011), s. 62
- *Electoral (Amendment) Act 2015* (62/2015), s. 1

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at

www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Data Protection Act 2018* (7/2018)
- *Communications Regulation (Postal Services) (Amendment) Act 2017* (3/2017)
- *Electoral (Amendment) Act 2015* (62/2015)
- *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015)

All Acts up to and including *Companies (Amendment) Act 2019* (10/2019), enacted 11 April 2019, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Communications Regulation (Universal Postal Services) Order 2019* (S.I. No. 150 of 2019)
- *Communications Regulation (Universal Postal Service) (Amendment) Regulations 2019* (S.I. No. 149 of 2019)
- *Communications Regulation (Universal Postal Service) (Amendment) (No. 2) Regulations 2018* (S.I. No. 534 of 2018)
- *Communications Regulation (Universal Postal Service) (Amendment) Regulations 2018* (S.I. No. 499 of 2018)
- *Communications Regulation (Financing of Provision of Universal Postal Service) Regulations 2013* (S.I. No. 469 of 2013)
- *Communications Regulation (Universal Postal Service) Regulations 2012* (S.I. No. 280 of 2012)

All statutory instruments up to and including *Communications Regulation (Universal Postal Services) Order 2019* (S.I. No. 150 of 2019), made 10 April 2019, were considered in the preparation of this revision.