



STATUTORY INSTRUMENTS.

S.I. No. 469 of 2013



COMMUNICATIONS REGULATION (FINANCING OF PROVISION OF
UNIVERSAL POSTAL SERVICE) REGULATIONS 2013

COMMUNICATIONS REGULATION (FINANCING OF PROVISION OF
UNIVERSAL POSTAL SERVICE) REGULATIONS 2013

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 36(2) of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011), hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Communications Regulation (Financing of Provision of Universal Postal Service) Regulations 2013.

Interpretation / Definitions

2. (1) In these Regulations, unless the context otherwise requires:

"Act of 2002" means the Communications Regulation Act 2002 (No. 20 of 2002);

"Act of 2011" means the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011);

"applicable undertaking" means a postal service provider providing a postal service within the scope of the universal postal service;

"Commission" means the Commission for Communications Regulation;

"contribution cap" means a cap on the contribution to the unfair financial burden in order to promote the development of the postal sector for the provision of postal services within the scope of universal postal service and to promote the interests of postal service users availing of postal services within the scope of universal postal service;

"fund" has the meaning set out in section 36 of the Act of 2011;

"net cost" has the meaning set out in section 35 of the Act of 2011 and shall be calculated in accordance with ComReg Decision D09/13 dated 25 July 2013;

"postal service" has the meaning set out in section 6 of the Act of 2011;

"postal service provider" has the meaning set out in section 6 of the Act of 2011;

"postal service user" has the meaning set out in section 6 of the Act of 2011;

"postal service within the scope of the universal service" has the meaning set out in section 37 of Act of 2011;

"relevant financial year" means, in relation to an applicable undertaking, the financial year of the applicable undertaking;

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 6th December, 2013.*

"relevant turnover" means, in relation to an applicable undertaking, the gross revenue, excluding value added tax, paid or payable, of the applicable undertaking in respect of the provision of postal services within the scope of universal postal service in its relevant financial year;

"sharing mechanism" has the meaning set out in section 36 of the Act of 2011;

"unfair financial burden" has the meaning set out in section 36 of the Act of 2011 and ComReg D15/13;

"universal postal service" has the meaning set out in section 6 of the Act of 2011;

"universal postal service provider" has the meaning set out in section 6 of the Act of 2011.

(2) In these Regulations:

- (a) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;
- (b) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that a reference to some other enactment is intended; and
- (c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 2011 has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Act.

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Act.

(5) The Interpretation Act 2005 (No. 23 of 2005) applies to these Regulations.

Applicability

3. These Regulations apply to applicable undertakings following any determination by the Commission under section 35(4)(b) of the Act of 2011 that the net cost of provision of the universal postal service represents an unfair financial burden on the universal postal service provider concerned.

Assessment

4. The Commission shall assess the contributions of providers of postal services within the scope of the universal service for the purposes of meeting the unfair financial burden referred to in Regulation 3 on the basis of the statements of relevant turnover provided by applicable undertakings to the Commission as required by Regulation 6(1) of the Communications Regulation Act

2002 (Section 30) Postal Levy Order 2013 (S.I. No. 181 of 2013) and this Regulation.

Apportionment

5. The Commission shall apportion the verified net cost determined to be an unfair financial burden among applicable undertakings as follows:

(1) an apportionment amongst applicable undertakings based on the relative revenue-based market shares of applicable undertakings determined from the statements of relevant turnover from applicable undertakings under Regulation 4, subject to any contribution cap determined by the Commission to apply to any applicable undertaking in accordance with this Regulation;

(2) the Commission shall determine whether a contribution cap is to apply to each applicable undertaking other than the universal postal service provider having regard to:

(a) the impact of apportioning the net cost on the basis of Regulation 5(1) on the sustainability and profitability of each applicable undertaking other than the universal postal service provider; and

(b) the impact of apportioning the net cost on the basis of Regulation 5(1) on the development of competition in the provision of postal services within the scope of universal postal service; and

(3) if a contribution cap is determined by the Commission to apply to an applicable undertaking other than the universal postal service provider, the universal postal service provider and other applicable undertakings that are determined not to have a contribution cap applied shall cover, based on their relative revenue-based market shares, any shortfall between the contribution that would have applied to that applicable undertaking based on Regulation 5(1), and the actual contribution to be made by that applicable undertaking under the contribution cap determined by the Commission to apply to that applicable undertaking under Regulation 5(2).

Collection

6. (1) If the Commission determines that the total contributions from applicable undertakings other than the universal postal service provider under Regulation 5 would be less than the cost of establishing and maintaining the sharing mechanism, then no sharing mechanism will be established and the universal postal service provider will fund the unfair financial burden in full, and the Commission shall make this publicly known by way of an information notice.

(2) If Regulation 6(1) does not apply, each applicable undertaking, except for the universal postal service provider, shall pay to the Commission its contribution to the fund as determined by the Commission under Regulation 5.

(3) The Commission shall inform each applicable undertaking in writing of its contribution as specified in Regulation 6(2) and contributions shall be paid to the Commission within 30 days by way of banker's draft or such other means and on such other terms, if any, as the Commission may decide.

(4) A request by the Commission to an applicable undertaking under this Regulation may be delivered or sent by post to the applicable undertaking at the last address notified to the Commission of the applicable undertaking.

(5) In accordance with section 36(4) of the Act of 2011, the sharing mechanism and fund can be administered by the Commission or by any person 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 applicable undertakings and who shall be under the supervision of the Commission.

(6) In accordance with section 36(6) of the Act of 2011, any amount payable by way of a contribution pursuant to these Regulations that remains unpaid by an applicable undertaking 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.

Distribution to the universal postal service provider

7. (1) All contributions from applicable undertakings other than the universal service provider collected by the Commission pursuant to these Regulations shall be distributed by the Commission to the universal postal service provider within 60 days of receipt of the contributions from such applicable undertakings.

(2) All distributions to the universal postal service provider, including the notional distribution by the universal postal service provider to itself, will be recorded by ComReg and published in its annual report.



GIVEN under the Official Seal of the Commission for
Communications Regulation this
4 December 2013.

KEVIN O'BRIEN,
Commissioner on Behalf of the Commission for
Communications Regulation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

As required by section 36(2) of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011), these Regulations specify how any unfair financial burden on the universal postal service provider will be assessed, apportioned, collected and distributed to the universal postal service provider concerned.

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