

STATUTORY INSTRUMENTS

S.I. No. 733 of 2003

**COMMUNICATIONS REGULATION ACT 2002 (SECTION 30) POSTAL
LEVY ORDER 2003**

**Published by the Stationery Office
Dublin**

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(Prn. 1582)

Price €1.27

S.I. No. 733 of 2003
COMMUNICATIONS REGULATION ACT 2002 (SECTION 30)
POSTAL LEVY ORDER 2003

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 30 (as amended by Regulation 19 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 (S.I. No. 306 of 2003)) of the Communications Regulation Act, 2002 (No. 20 of 2002) hereby makes the following Order:

1. (1) This Order may be cited as the Communications Regulation Act, 2002 (Section 30) Postal Levy Order, 2003.

(2) This Order will apply to the levy period.

2. (1) In this Order—

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

“applicable undertaking” means all providers of postal services who are designated as a universal service provider or hold or are required to hold a postal service authorisation;

"Commission" means the Commission for Communications Regulation;

“holder of a postal service authorisation” means a public or private entity providing postal services and holding a postal service authorisation in accordance with Regulation 7 of the Regulations;

"levy period" means the period commencing 1 January 2004 and ending on 30 June 2004;

"levy year" means a financial year of the Commission commencing on 1 July and ending on 30 June;

"Minister" means the Minister for Communications, Marine and Natural Resources;

“postal services” has the same meaning as in the Communications Regulation Act 2002 (No. 20 of 2002);

"quarter" for the purposes of this order means a period of 3 months ending on 30 September, 31 December, 31 March and 30 June;

"relevant financial year" means in relation to an applicable undertaking the financial year of the applicable undertaking ending in a levy year;

"relevant turnover" means in relation to an applicable undertaking the gross revenue excluding value added tax paid or payable to the applicable undertaking in respect of the provision of postal services;

"Regulations" means the European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002);

"universal service provider" means a postal service provider designated as a universal service provider by the Minister in accordance with Regulation 4(2) of the Regulations);

and any cognate words shall be construed accordingly.

(2) In this Order—

(a) a reference to an Article is to an Article of this Order unless it is indicated that reference to some other Order is intended; and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

3. This Order applies to applicable undertakings.

4. (1) A levy is imposed on all applicable undertakings in respect of the levy year ending 30 June 2004.

(2) The levy imposed by paragraph (1) shall, subject to Article 5, be payable by each applicable undertaking:

(a) on 31 March 2004 in respect of the quarter ending on 31 March 2004; and,

(b) on 30 June 2004 in respect of the quarter ending on 30 June 2004;

5. (1) The amount of the levy imposed on applicable undertakings in respect of the levy year in which the applicable undertaking is designated as a universal service provider shall be:

(a) 0.25 % of the relevant turnover for postal services provided pertaining to the universal service obligation; and

(b) 0.075% of the relevant turnover for postal services provided outside the scope of the universal service.

(2) The amount of the levy imposed on applicable undertakings, other than those designated as a universal service provider, shall be 0.075% of the relevant turnover for postal services subject to a minimum annual levy of €1,000.

(3) Where an applicable undertaking is liable to pay the levy for part only of a levy year, including the levy year in which this Order comes into operation, the amount of the levy imposed on the applicable undertaking in respect of that levy year shall be the appropriate proportion of the amount specified in paragraph 1 or 2 as appropriate. In this paragraph "appropriate proportion" means the proportion that the part of the levy year in which the applicable undertaking is liable to pay the levy shall bear to the levy year as a whole.

(4) Where, in respect of any levy year or part thereof, it is, by reason of the date in which the relevant financial year of the applicable undertaking terminates, impractical for an applicable undertaking to determine its liability under this article for the purpose of making payments under article 4 as they fall due, the applicable undertaking may, subject to article 6, assess its liability on the basis of its relevant turnover in the financial year ending in the previous levy year and may make provisional payments under article 4 accordingly.

6. (1) Every applicable undertaking shall, within 21 weeks of the end of the relevant financial year, submit to the Commission a statement, certified by a person who is qualified under the Companies Acts 1963 to 2001, for appointment as auditor of a company, of the relevant turnover of the applicable undertaking in question, in that financial year. The statement of a universal service provider shall distinguish between services provided pertaining to the universal service obligation and services provided outside the scope of the universal service.

(2) Where the amount paid by an applicable undertaking in accordance with articles 4 and 5 in respect of any levy year is less than the amount payable by reference to the said statement of relevant turnover, the provider concerned shall, within such time or times as may be specified by the Commission in a request in writing, pay to the Commission the balance of the levy so payable.

(3) Where the amount paid by an applicable undertaking in accordance with articles 4 and 5 in respect of any levy year is more than the amount payable by reference to the

said statement of relevant turnover, the Commission shall, as soon as may be after the end of the levy year, repay to the applicable undertaking concerned the excess amount so paid.

7. Any surplus of levy income over the expenses incurred by the Commission in the discharge of its functions relevant to this levy in a particular financial year will either—

- (a) be retained by the Commission to be offset against levy obligations for the subsequent year, or
- (b) be refunded proportionately to the applicable undertakings on whom the levy is imposed.

8. (1) A levy or portion thereof payable in accordance with the terms of this Order shall be paid in cash or by cheque, money order, postal order or electronic funds transfer to the Commission.

(2) A payment referred to in paragraph (1) and a statement referred to in Article 6 may be delivered or (save in the case of a payment in cash or electronic funds transfer) sent by post to the Commission at Abbey Court, Irish Life Centre, Abbey Street, Dublin 1, or at such other address as may from time to time be notified by the Commission to each applicable undertaking.

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

(4) In this article "last address" in relation to an applicable undertaking means the last address notified to the Commission for the purposes of this Order.

9 Subject to the liability of any universal service provider to pay the levy due for the quarters ending 30 September 2003 and 31 December 2003, the Telecommunications (Miscellaneous Provisions) Act 1996 (Section 6) Postal Levy No. 3 Order 2002 (S.I. No. 549 of 2002) is revoked with effect from 1 January 2004. Any surplus amount collected under that Order shall either

- (a) be retained by the Commission to be offset against the levy payable under this Order, or
- (b) be repaid by the Commission to the applicable undertaking.

GIVEN under the Official Seal of the Commission for Communications Regulation,
30 December 2003.

JOHN DOHERTY, Chairperson

EXPLANATORY NOTE

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

This Order makes provision for a levy on providers of postal services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services. A revised levy order will be made for the levy year commencing 1 July 2004 and ending 30 June 2005, and for subsequent levy years.