



Commission for  
**Communications Regulation**

# **Guidelines concerning "postal services within the scope of the universal postal service"**

## **Information Notice**

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# **1 Section 37(2) of the Communications Regulation (Postal Services) Act 2011 – ComReg 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.**

1. The Communications Regulation (Postal Services) Act 2011 (“2011 Act”) provides, amongst other things, for the regulation by the Commission for Communications Regulation (“ComReg”) of “*postal services*” generally and for ensuring the provision of the “*universal postal service*” by An Post, the designated “*universal postal service provider*”. The scope of the universal postal service is largely set out in section 16(1) of the 2011 Act while section 16(9) provides that ComReg shall, following a public consultation, make regulations specifying the services to be provided by An Post relating to the provision of the universal postal service.
2. ComReg has the specific statutory function to ensure the provision of a universal postal service that meets the reasonable needs of postal service users while it also has the statutory objective, in the performance of that function, to promote the availability of a universal postal service within, to and from the State at an affordable price of the benefit of all postal service users. This function includes ensuring the proper financing of the universal postal service and Chapter 5 of the 2011 Act (sections 35 and 36) sets out provisions relating to same.
3. Section 35(1) of the 2011 Act provides that if An Post seeks funding for the net costs (if any) of providing the universal postal service then it may submit a request in writing to ComReg. On receipt of such a request and all required information in support of it, ComReg shall determine whether the universal postal service does represent a net cost and an unfair financial burden on An Post, in the period to which the request relates. ComReg may determine that the universal postal service does not represent a net cost and unfair burden on An Post.

4. Section 36(1) of the 2011 Act provides that if ComReg determines that the net cost of the universal postal service does represent an unfair financial burden on An Post then it shall apportion that net cost amongst “*providers of postal services within the scope of the universal postal service*”. Such providers shall be required to make a contribution for the purposes of meeting An Post’s burden, in accordance with the cost apportioned to each of them. The assessment, apportionment, collection and distribution of any such contributions shall be carried out under a “*sharing mechanism*” established under regulations made by ComReg, with such contributions paid into a common fund.
5. In addition, section 44 of the 2011 Act amends section 30 of the Communications Regulation Act 2002 (the “Principal Act”) by insertion of the following text: “*for the purpose of meeting expenses properly incurred by [ComReg] in the discharge of its functions relating to postal services [ComReg] may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service.*”
6. From the above provisions in sections 35, 36, and 44 of the 2011 Act, it is clear that there are potential financial consequences to being deemed to be a provider of a “*postal service within the scope of the universal postal service*”. Any such provider shall be required to pay such levy to ComReg as may be imposed, and may also be required in time to make contribution(s) to the net cost of the universal postal service provided by An Post if it is an unfair burden on An Post.
7. Section 38 of the 2011 Act sets out the provisions for obtaining an authorisation to provide a “*postal service*”. A person who intends to provide a postal service is required to notify ComReg before doing so, providing the information set out in section 38(3). Section 38(6) provides that any such person must include with his or her notification a declaration stating whether the postal service concerned is, or is not, within the scope of the universal postal service. Section 38(7)(a) provides that a person who intends to provide a postal service shall, before doing so, make the required notification to ComReg; failure to do so is committing a criminal offence and is liable on summary conviction to a class A fine. Section 38(7)(b) provides that a person who makes a notification or a declaration which is to his or her knowledge false or misleading in any material respect commits a criminal offence and is liable on summary conviction to a class A fine.
8. A “*postal service provider*” must therefore have some means of assessing whether the postal service concerned is, or is not, within the scope of the universal postal service. In this regard, Section 38(1) of the 2011 Act provides that a person who makes a notification shall have regard to the guidelines published by ComReg under section 37.

9. Section 37 of the 2011 Act is the key provision in relation to the concept of “postal services within the scope of the universal postal service” and so it is set out in full below:

*"(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.”*

10. It should be noted that in order to publish these guidelines it was first necessary for ComReg to make Regulations, under section 16(9) of the 2011 Act, specifying the services which An Post shall provide as the designated universal postal service provider. It was only after having set the scope of the universal postal service in this manner that ComReg could then move onto considering which postal services fall within the scope of the universal postal service.
11. Having regard to the provisions of section 37(1) of the 2011 Act, it is apparent that the central issue is one of substitutability of services. If a postal service matches the description of the universal postal service in section 16 of the 2011 Act and Regulations 16(9) then it is a postal service within the scope of the universal postal service, but even if it does not fully match that description then it may still be a postal service within the scope of the universal postal service. If the service does not involve a clearance or delivery on every working day, or if it is not provided throughout the State, or if it is not provided at an affordable price or at a uniform tariff, then it still may be a postal service within the scope of the universal postal service.
12. Section 37(1)(c) of the 2011 Act makes it clear that the key determinant is an economic assessment of demand-side substitutability – i.e. whether a “*postal service user*” would view a particular postal service as being “*reasonably interchangeable*” with a service provided by An Post as part of its universal postal service. If the two services are “*reasonably interchangeable*” then it is proper to conclude that the postal service falls “*within the scope of the universal postal service*”. If the two services are not “*reasonably interchangeable*” then one may only conclude that the postal service does not fall “*within the scope of the universal postal service*”.
13. In determining whether the service is “*reasonably interchangeable*”, a postal service provider should consider whether his or her service is interchangeable for any of the “*universal postal services*” which An Post is required to provide. This can be done by comparing and directly assessing the characteristics and similarities of the respective services. In this respect, this may include consideration of the following characteristics and similarities:

- The postal service provider may consider the likely reaction of users of its service if it decided to increase the charges for that service. That is, considering if it increased its charge for its postal service by a small but non-transitory amount (in the range of 5 - 10 %) could its customers switch with relative ease to the universal postal service provided by An Post?
  - The postal service provider may also involve consideration as to whether if its service was not provided at all would its customers be able to use An Post's universal postal service to meet their needs.
14. For the avoidance of doubt, these guidelines are not a substitute for the 2011 Act and should be read in conjunction with the relevant legislation including the 2011 Act and the ComReg Regulations, made under section 16(9) of the 2011 Act. It is for each postal service provider to determine, having due consideration for these guidelines and other relevant evidence, whether any of their postal services fall "*within the scope of the universal postal service*" and therefore require notification to ComReg under section 38 of the 2011 Act. This document may be amended from time to time and is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally.