



Commission for
Communications Regulation

Terms and conditions of the universal postal service – Single Piece and Bulk Mail

Publication of submissions to Consultation
15/112

Information Notice

Reference: ComReg 15/132

Date: 16/12/2015

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

This Information Notice contains non-confidential submissions by respondents to ComReg's Response to Consultation 15/37 and Consultation on Draft Decision regarding 'Terms and conditions of the universal postal service - Single Piece and Bulk Mail' (ComReg 15/112¹) which ran from 21 October 2015 until 3 December 2015.

Responses were received from the following respondents:

Respondent	
1	An Post

¹ http://www.comreg.ie/_fileupload/publications/ComReg15112.pdf

1. An Post:

Terms and conditions of the universal postal service

Single Piece and Bulk Mail

REFERENCE: CONSULTATION 15/112

**An Post Response
3 December 2015**

Table of Contents

1. Introduction	3
2. Response to consultation questions	8
3. Conclusion	23

1. Introduction

An Post welcomes the opportunity to submit its views on ComReg's document 15/112 on "Terms and Conditions of the universal postal service". In addition to our detailed submissions as part of Consultation Document 15/37, An Post has engaged with ComReg in a lengthy iterative process where views on various aspects of Terms and Conditions were shared.

An Post takes issue with the purported legal basis for ComReg's Decision and its statements in paragraphs 22-24 of its Consultation Document 15/112 to the effect that "*the key outstanding fact, at this point in time,*" is that An Post has not submitted its "*final version*" of its "*proposed*" Terms and Conditions under Section 22 of the Communications Regulation (Postal Services) Act, 2011("the Act"). This is incorrect.

An Post submitted its Terms and Conditions to ComReg and published its Terms and Conditions under Section 22(1)(b) after notification to ComReg. An Post provided a copy of the to be published Terms and Conditions to ComReg.

An Post has been serving its customers on the basis of its current Terms and Conditions (published on its website in May 2012), and the public has been contracting with An Post on that basis for years. These are not draft Terms and Conditions.

Section 22 is linked to the transition provisions of Section 25. One of the many implications of ComReg's assertion in paragraphs 22-24 of its Consultation Document 15/112 is that the current Terms and Conditions of the postal service would be those set out in the Postal Warrants as amended by statutory instruments adopted over the years under Postal Legislation prior to the 2011 Act. This is not the case.

ComReg adopted the Communications Regulation (Universal Postal Service) Regulations, 2012 SI 280/2012 on 31st July 2012. Since that time, An Post has liaised with ComReg over future amendments to its Terms and Conditions to reflect *inter alia* SI 280/2012.

Consideration of such amended Terms and Conditions falls under Section 24 of the 2011 Act, not Section 22.

An Post has engaged for some considerable time in attempting to reach agreement with ComReg in respect of these amended Terms and Conditions. An Post has been committed to this engagement, notwithstanding its serious concerns in respect of apparent misunderstandings on ComReg's part as to both the legal parameters within which this process operates and various factual matters in respect of the process to date.

These concerns have been heightened by the contents of ComReg Consultation Document 15/112, in particular the draft Decision set out in Annex 1 to Document 15/112 (the "**Draft Decision**") and ComReg's threat to issue

such a Decision in the event that it is not satisfied with the Terms and Conditions submitted by An Post.

An Post has a further fundamental concern with the purported legal basis of the proposed Decision. ComReg has no power to approve Terms and Conditions with amendments not made by An Post. Whilst An Post has made every effort to agree the amendments, ComReg remains dissatisfied. ComReg's power, without prejudice to the position An Post may adopt, is to issue a Direction to An Post, under Section 24(5) or Section 24(11) as the case may be (and An Post reserves its position in this regard), such a Direction is subject to an appeal under Section 52 of the 2011 Act.

ComReg can neither bypass this statutory right of appeal, nor purport to impose "by approval" amendments which An Post has not agreed to make.

ComReg's draft Decision purports to create Terms and Conditions for contracts between An Post and the public for which An Post would be responsible. This is *ultra vires*, may give rise to compensation against ComReg for third parties relying on such Terms and Conditions, and for An Post, and may constitute tortious interference in contractual relations. An Post does not intend to contract or to conduct its business on Terms and Conditions written by ComReg. Should third parties rely on Terms and Conditions purportedly created by ComReg for An Post via such a purported power of amendment, or otherwise, An Post disclaims liability for such service provision, and third parties must look to ComReg for any compensation for damage which arises from such reliance.

ComReg appears to be asserting a power:

- a. To amend and write An Post's Terms and Conditions;
- b. Free of an appeal; and
- c. Free of the constraints on the power to direct An Post specified in Section 24 of the Act.

We believe that there is no such power under the Act and therefore any purported exercise of same does not bind An Post, does not form the basis of An Post's contractual relations with third parties, and is *ultra vires*.

Furthermore, as set out in detail in this Response, An Post is concerned that ComReg has in a number of its recommendations in respect of An Post's Terms and Conditions exhibited a misunderstanding of both An Post's requirements in order to fulfil the universal service obligation and the proper content of such Terms and Conditions.

However An Post is prepared to agree as part of its Terms and Conditions a number of the amendments proposed by ComReg. If ComReg remains dissatisfied, it is open to ComReg (without prejudice to An Post's right to challenge such a course of action) to decline to accept the amendments to the Terms and Conditions, or (without prejudice to An Post's right to challenge such a course of action) to issue a Direction to An Post.

We are disappointed that a number of significant changes not just to the Terms and Conditions but also to An Post's operational processes appear to be proposed in the draft Decision included at Annex 1 of Consultation Document 15/112. An Post's response of 10 June 2015 to Consultation Document 15/37 clearly highlighted a number of significant issues with ComReg's preliminary views expressed in that consultation, many of these issues remain unchanged in the draft Decision included in Consultation Document 15/112.

In the Terms and conditions An Post has to draw the postal user's attention to matters which they might not be aware of that could affect our ability to provide the postal service they have chosen and we need to be clear about what they can expect in terms of service. In addition to clarifying both An Post's and our customer's rights and obligations we need to explain how we will deal with problems that can arise in the context of a legal relationship described by the Terms and Conditions to which both An Post and the postal service user agree to be bound by. That said, An Post has listened to ComReg's concerns and engaged in a process to improve the Terms and Conditions, where An Post feels the Terms and Conditions could be improved.

The An Post Terms and Conditions as currently published on the An Post website comprise of two simple documents: (1) Terms and Conditions for users using single piece USO postal services and (2) Terms and Conditions for bulk mailers using bulk mail USO services. Both sets of Terms and Conditions are in single-document form, easily accessible and represent the first formal attempt by An Post to 'consolidate' all of the laws and legal obligations that apply in the interests both of An Post and of our customers. There has been no customer dissatisfaction with these. An Post does not understand why ComReg wants lengthy documents which will only serve to add confusion despite ComReg stating that it wants plain intelligible Terms and Conditions.

Consultation Document 15/112 includes many amendment requirements from ComReg some of which have been incorporated into a proposed Draft Decision at Annex 1. ComReg indicates that An Post may be subject to this draft Decision if An Post does not submit to ComReg a set of Terms and Conditions which reflect commitments made by An Post previously but also which must reflect the amendments set out by ComReg in Consultation Document 15/112. As previously highlighted by An Post during the iterative process and in our submissions to the consultation process, a number of these amendments represent significant changes to An Post's current service offering to customers in its Terms and Conditions published in May 2012 and its operating model. The combined effect of the specific amendments required to be made by An Post to its Terms and Conditions goes beyond what is necessary to produce Terms and Conditions for universal postal services and in certain instances unnecessarily and without basis deals with internal operational aspects of An Post's business. We do not believe that a document setting out the Terms and Conditions of the universal postal service legally or practically requires the setting out of detailed operational processes or specific procedures for postal services. We have suggested on many occasions that

the Terms and Conditions should be clear, focused and simple and that many of the issues raised by ComReg could be better dealt with, as is currently the case, with additional complementary publications which are referenced and easily accessible to the postal user. The Terms and Conditions document is not a manual as to how An Post provides its services nor should it be confused with being an explanatory booklet similar to the brochures and booklets An Post produces to assist customers in understanding the services we offer.

An Post notes ComReg's concerns in Section 3.2, General Issues, of document 15/112, regarding the user friendliness, language, references to conditions contained in documents external to the proposed Terms and Conditions and other general issues regarding the proposed Terms and Conditions. An Post would prefer to receive ComReg's approval for its amended Terms and Conditions. As outlined in our response of 10 June 2015 An Post proposes to have the final Terms and Conditions documentation, subject to the output from this consultation, presented in an updated format after engagement of a copywriting professional. The many recommendations included in the draft Decision at Annex 1 of Document 15/112 are broad in range and subjective in nature. Notwithstanding this, An Post is committed to once more revise its proposed amendments before 23 December 2015 and forward these to ComReg.

While ComReg has emphasised the importance of USO services meeting the reasonable needs of consumers, we note that it is also essential that ComReg considers the financial sustainability of An Post's Universal Service Obligation when reviewing this response from An Post. In particular, ComReg should be mindful of any proposals to change the Terms and Conditions of Universal Services that may increase the financial costs of providing the Universal Service.

It is in An Post's interests also to ensure that our amended Terms and Conditions are not aspirational, as they form the basis of contract, and that we can deal with postal users' queries efficiently and expeditiously. Many of the issues cited by ComReg are issues with which we have previously stated we are in agreement. Several of these issues, however, remain of concern and are issues with which we have indicated from the outset we are not in agreement. We have concerns about the procedural approach which has been adopted for approval or amendment of the Terms and Conditions provided to ComReg as published by An Post in accordance with Section 22 of the 2011 Act. The underlying ability to amend the Terms and Conditions and the extent of the proposed amendments in order to approve or amend the Terms and Conditions for the universal postal service is also of concern to An Post especially as we believe that many of the amendments do not relate to the Terms and Conditions at all but relate to operational processes and management of the day to day business of the company.

We have set out in this submission our views on the content of Consultation Document 15/112 and in particular specific responses on each of the

proposed amendments identified by ComReg in the same document, without prejudice to our position on the legal basis and scope of ComReg's powers.

2. Response to consultation questions

Q. 1 Do you agree with ComReg’s proposal to amend Directions 1(c) and 1(d) of D11/03 as set out in paragraph 71? Please give a detailed explanation for your answer.

An Post agrees with the proposed amendments to Directions 1(c) and 1(d) of D11/03.

Q. 2 Do you believe that the draft text of the proposed Decision below is, from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required?

An Post cannot adopt, in full, a number of the revisions proposed by ComReg to An Post’s amendments.

Details are included below in relation to each of these amendments.

6.1.1. amend the proposed Terms and Conditions to ensure that the language used is plain and intelligible;

An Post is committed to providing updated Terms and Conditions that meet both the customer’s and An Post’s requirements. The Terms and Conditions document is a legal document reflecting the contractual arrangements between An Post and its customers and the language must reflect that.

6.1.2. amend the proposed Terms and Conditions by simplifying the numbering to ensure consistency and ease of reference for postal service users;

This has been referred to a copywriter and will be accommodated in An Post’s amendments to its Terms and Conditions.

6.1.3. amend the proposed Terms and Conditions to include a graphical representation of what can be posted and what compensation will be paid for loss, theft, damage, or issues relating to quality of service, for postal packets sent using (i) standard and (ii) insured services;

It is not standard practice to include graphical representations in Terms and Conditions documents. For example, graphical representations do not feature in Royal Mail or Eircom Terms and Conditions documents. However, this has been referred to a copywriter and will be accommodated in An Post’s amendments to its Terms and Conditions where practical.

6.1.4. amend the proposed Terms and Conditions to include a graphical representation of the dimensions of postal items (letter/postcard, large envelope, packet and parcel) within the proposed Terms and Conditions which conveys the information as set out in [condition B.1 of] the proposed Terms and Conditions;

It is not standard practice to include graphical representations in Terms and Conditions documents. For example, graphical representations do not feature in Royal Mail or Eircom Terms and Conditions documents. However, this has been referred to a copywriter and will be accommodated in the An Post's amendments to its Terms and Conditions.

6.1.5. amend the proposed Terms and Conditions to include a graphical representation of the differences between the universal postal services to convey the information as set out in [Section E of] the proposed Terms and Conditions;

It is not standard practice to include graphical representations in Terms and Conditions documents. For example, graphical representations do not feature in Royal Mail or Eircom Terms and Conditions documents. However, this has been referred to a copywriter and will be accommodated in the An Post's amendments to its Terms and Conditions.

6.1.6. amend the proposed Terms and Conditions by consolidating the defined terms used in the Terms and Conditions into a single comprehensive listing. When defined terms are used for the first time, they must be highlighted (e.g. shown in bold print) and hyperlinked to the appropriate definition;

This has been referred to a copywriter and will be accommodated in the An Post's amendments to its Terms and Conditions.

6.1.7. amend the proposed Terms and Conditions to exclude references to terms which are contained in documents external to the Terms and Conditions. In limited circumstances where such reference may be necessary, the Terms and Conditions must clearly direct postal service users to where these documents can be found. The Terms and Conditions must not make reference to documents external to the Terms and Conditions that are not easily available to postal service users, such as the Foreign Parcels (Customs) Warrant, 1885;

Our original response and proposal to address the same concerns raised previously by ComReg has not changed since our Response to Consultation in ComReg Document 15/58. As with all published An Post documents, the services of a copywriter will be engaged for An Post's amendments to its Terms and Conditions. As originally proposed by An Post, we will ensure that links to relevant websites where Acts and Statutory Instruments are already publicly available and will be made available through a hyperlink on our

website. Referencing of such applicable legislative instruments within the body of the Terms and Conditions, will be drafted in accordance with standard legal drafting practice.

6.1.8. amend the Terms and Conditions to ensure any drafting errors including mistaken references, spelling and punctuation errors, and inconsistency in terms used are rectified;

This issue has been referred to a copywriter and will be accommodated in An Post's amendments to its Terms and Conditions.

6.1.9. amend the proposed Terms and Conditions to ensure that there is consistency between the proposed SP T&Cs and proposed BM T&Cs (as appropriate);

This has has been referred to a copywriter and will be accommodated in An Post's amendments to its Terms and Conditions.

6.1.10. amend the section "How to Access An Post's Universal Services" in the "Introduction" of the proposed SP T&Cs to include Delivery Service Units as access points for postal service users for standard postal packets (to include standard meter mail but exclude meter mail that is being sent using a bulk mail service).;

An Post does not accept this recommendation and suggests the following important factors be considered by ComReg:

- The nationwide number of Meter customers is relatively small;
- Access is currently not an issue for Meter customers. No complaints have been received from these customers in this regard; and
- Access is available through over 1,100 post offices and over 500 dedicated meter boxes nationwide.

An Post does not believe that there is a customer issue to be addressed.

6.1.11. amend the proposed Terms and Conditions to ensure that capital letters are only used for defined terms (or where it is grammatically appropriate);

This has been referred to a copywriter and will be accommodated in An Post's amendments to its Terms and Conditions.

6.1.12. amend the proposed Terms and Conditions to ensure that defined terms are used properly and consistently and in particular address the non-exhaustive list of the issues ComReg identified in this regard as set out in in Annex 4 of 15/37;

This has been referred to a copywriter and will be accommodated in An Post's amendments to its Terms and Conditions.

6.1.13. amend the proposed Terms and Conditions to insert a definition of "Postal Packets for the Blind and Partially Sighted" referencing or reflecting the universal postal union ("UPU") description of "items for the blind" in the definitions section and the term then to be used consistently throughout the Terms and Conditions;

The definition will be updated as appropriate.

6.1.14. amend the definitions of "Fragile" and "Exceptionally Fragile Articles" in the proposed Terms and Conditions so that postal service users are in no doubt as to what the distinction between the terms is;

An Post accepts this. The following definitions will be included in An Post's amendments to its Terms and Conditions:

"Fragile when used in relation to any Postal Packet of any description thereof means a Postal Packet containing articles which are liable to break easily and which are to be handled with special care and are clearly marked or labelled accordingly."

"Exceptionally Fragile Article means any correctly packaged items which cannot sustain the shock of a fall of 0.5 metres or more or exposure for any period to freezing temperature."

6.1.15. amend the definitions of "Liquid" and Flammable or Corrosive solids or Liquids" in the proposed Terms and Conditions to ensure that postal service users are clear as to what the distinction between the terms is and whether it is permitted to send any "Liquids" in domestic postal packets;

An Post accepts this recommendation. Liquids which are not flammable or corrosive, are admissible for destinations within the State.

6.1.16. amend condition B.6(4)(a) in the proposed Terms and Conditions to make it clear when An Post will refund a "Charge" and the types of conditions An Post will attach to refunds in specific circumstances. An Post must indicate that it will, in general, provide full refunds; and that in the event that limited refunds are proposed, limits should be outlined that fairly balance the interests of the parties;

The policy of applying deductions for administration fees to refunds is well established in other utilities e.g. Bus Eireann. An Post does not accept that the administration fee applied to refunds is a "Charge" that should be included in the

Schedule of Charges. "Charges" in this case are limited to Postal Services, the administration fee is not such a "Charge". However, An Post agrees to include details of the administration fee as a separate document on the An Post website, in the same location as the Schedule of Charges. This note will state:

"The following deductions of administrative fees will be applied to refunds:

Stamps: €6.50 is the minimum value of unused postage stamps that will be accepted for refund.
Fee of 20% will be applied to refunds up to €250 and
Fee of 10% will be applied to the balance over €250.

Stamps must have been purchased at a Post Office/Post Office stamp vending machine or from a person duly authorised to sell stamps within the previous two years.

Spoiled Franking Impressions: No charge for 20 items or less.
Fee of 10% will be applied to refunds for more than 20 items.
The entire envelopes / wrappers of address labels must be submitted.

No refund will be given for Franking Impressions which are not surrendered within one month of the date of franking."

6.1.17. amend condition B.6(5) in the proposed Terms and Conditions to make it clear what in general terms the circumstances are that would cause doubt or dispute in establishing which service a postal packet is to be conveyed in;

This condition is well established in the postal industry, for example, section 4.1 of Royal Mail United Kingdom Post Scheme (10 August 2015) states ".....We will provide the services in the manner that we deem to be most appropriate according to our operational requirements and an overarching need to secure the sustainability of the Universal Service....." An Post will update Terms and Conditions to include some examples of situations when this may arise. However, provision of an exhaustive list is not possible.

6.1.18. amend condition E.9.1(3) in the proposed Terms and Conditions by deleting it or by inserting text which indicates limits on An Post's right to refuse or discontinue, for example, by limiting this right to circumstances where An Post has serious grounds for termination of the "PO Box Service" and indicating that An Post will provide the postal service user with reasonable notice of the discontinuation which will provide clear justification in written form to support An

Post's reasoning for refusing or discontinuing the provision of the PO Box Service;

An Post accepts this recommendation which reflects current practice in any event. An Post notes, however, that where a PO Box service must be refused or discontinued, notice will only be provided to the customer where this does not contravene lawful authority which prevents disclosure of the refusal or discontinuance of a service; where to provide such notice could prejudice the ability of law enforcement agencies and/or other bodies with the requisite legislative and/or powers in the carrying out of their functions; and/or where the provision of notice cannot for other reasons such as mental incapacity and/or wardship be given to the postal service user in question.

6.1.19. amend Condition E.9.2A(12) in the proposed Terms and Conditions by deleting it or by inserting text to indicate limits on An Post's right to refuse or discontinue, for example indicating that An Post will only discontinue the "Redirection Service" if there are serious grounds for this and that reasonable notice of the discontinuation of the "Redirection Service" will be given which will provide clear justification in written form to support An Post's reasoning for refusing or discontinuing the provision of the Redirection Service;

An Post accepts this recommendation which is already reflected in current practice. An Post notes, however, that where a Redirection Service must be refused or discontinued, notice will only be provided to the customer where this does not contravene lawful authority which prevents disclosure of the refusal or discontinuance of a service; where to provide such notice could prejudice the ability of law enforcement agencies and/or other bodies with the requisite legislative and/or powers in the carrying out of their functions; and/or where the provision of notice cannot for other reasons such as mental incapacity and/or wardship be given to the postal service user in question.

6.1.20. amend the proposed Terms and Conditions in order to make the restrictions An Post is attaching to the sending of money by post, if any, clear;

An Post accepts this recommendation.

6.1.21. amend the proposed Terms and Conditions in order to set out for all universal postal services whether "Paper Money" can be transmitted by post, or not;

An Post accepts this recommendation.

6.1.22. in the event that postal service users need to avail of specific service in order to post money (such as the "Secure Post (Insured)")

service) the proposed Terms and Conditions must be amended in order to clearly state this;

An Post accepts this recommendation.

6.1.23. amend the proposed Terms and Conditions to explicitly set out whether compensation is or is not available;

An Post accepts this recommendation.

6.1.24. amend section E.7 (“Single Piece - Secure Post (Insured)”) of the proposed Terms and Conditions to give clarity as to whether it is possible to send “Paper Money” using the “Secure Post (Insured)” service to addresses outside the State;

An Post accepts this recommendation.

6.1.25. amend condition B.2(1) the proposed Terms and Conditions to provide details of the “special rules in relation to the packing of any particular Postal Packet or article”;

An Post accepts this recommendation and propose including a hyperlink to the packaging instructions included on the An Post website. Additional rules are however required from time to time and An Post reserves the right to insist on additional rules as required e.g. for security reasons.

6.1.26. amend condition B.7(4) of the proposed SP T&Cs to state: “Postage stamps on Postal Packets presented at a Post Office counter or posted at a collection box are cancelled by means of automated processing or manual cancellation which will have the date of posting and acceptance of the postal packet for onward transmission by post applied. Where automated cancellation has not occurred, the postage stamps shall be cancelled by means of a hand stamp, ink pen or marker.”;

There is no obligation in the Act to introduce new operational procedures such as those proposed by ComReg in order for the Terms and Conditions to be approved by ComReg. An Post questions the basis for this proposed amendment and also the necessity of such an intervention into the day to day management of the business. An Post also notes that we have previously outlined in our response of 10 June 2015, that An Post cannot accept this amendment to apply the date of posting and acceptance of the postal packet. An Post already carries out stamp cancellation for revenue protection purposes and An Post plans to continue this practice. However, we do not believe that it is appropriate to include this in Terms and Conditions.

6.1.27. amend the terms relating to Single Piece Letters, Single Piece Large Envelopes, and Single Piece Packets services to indicate that these services have “a transit time objective as specified in the published Statutory Instrument S.I. 280 of 2012 subject to the following exclusion: the objective should not include postal packets to addresses outside the European Union with incomplete or misleading customs declarations.”;

An Post accepts this recommendation.

6.1.28. amend the terms relating to Single Piece Parcels service services to indicate that these services have “a transit time objective as specified in the published Statutory Instrument S.I. 280 of 2012, subject to the following exclusion: the objective should not include postal parcels to addresses outside the European Union with incomplete or misleading customs declarations.”;

An Post accepts this recommendation.

6.1.29. amend condition E.7 of the proposed SP T&Cs to provide clear information setting out the different levels of insurance cover and compensatory amounts applicable to each service;

An Post accepts this recommendation.

6.1.30. amend condition E9.1 of the proposed SP T&Cs to delete references to the “caller’s service”;

An Post accepts this recommendation.

6.1.31. amend Condition B.6 of the proposed Terms and Conditions to include the following text: “Underpaid postal packets shall be liable, upon delivery, to the charges specified in the Schedule of Charges”;

The recommendation if accepted would remove a condition from Section C.3(4) of the Terms and Conditions and reposition it within the condition dealing with Charges, i.e. Condition B.6 of the Terms and Conditions. A further amendment is required to the wording of Condition C.3(4) in that reference to the treatment of the underpaid item in accordance with An Post’s powers under Section 47 of the 2011 Act, as is currently stated, is to be removed. The proposed wording from ComReg is confusing as it does not specifically relate to Charges but in fact alters the way in which An Post carries out delivery. ComReg has endeavoured to explain in Section 3.3.13.3 of ComReg Consultation Document 15/112 what it originally meant and what it is proposing. However, in order for the amendment to be given effect to, it presupposes that An Post will deliver underpaid postal

packets and cannot avail of other powers under Section 47 of the 2011 Act. An Post has explained that when it processes postal packets which are underpaid, those packets are not in compliance with the Terms and Conditions which require (unless otherwise stated) pre-payment of postage reflecting the applicable charge. Where a postal packet does not comply with the requirement to prepay postage, it cannot be delivered and our practice has been to choose the return to sender option from the options available to us by law. This has long been the case in practice and An Post's comments on this specific issue to date have not deviated from the practice which has been in place of which ComReg has been aware. The effect of ComReg's proposal, when read in conjunction with the other amendments directly related to C.3(4) and B.6 would be to introduce a new approach to mails processing and delivery operations which we believe is outside the remit of the Terms and Conditions consultation. ComReg's proposal would significantly increase the cost of providing the service and ultimately this additional cost has to be borne by compliant customers.

This response should be considered in conjunction with our response to Draft Decision 6.1.46 (below).

6.1.32. amend the proposed Terms and Conditions by deleting condition B.6(4)(b);

An Post does not accept this recommendation in full but will amend the condition and the An Post website as indicated at point 6.1.16 above.

6.1.33. amend the Schedule of Charges so that all of the charges for each universal postal service are clearly and comprehensively set out and are consistent with the price cap decision;

All "Charges" are already included in the Schedule of Charges.

6.1.34. amend the proposed Terms and Conditions by deleting condition B.6(4)(b) or alternatively make amendments which clarify condition B.6(4)(b) in particular, the services to which this condition is applicable and the amount of the deposits required must be clearly stated;

ComReg refers to this applying to condition B.6 (6) in paragraph 171 of document 15/112 and then refers to condition B.6 (4)(b) in the above recommendation clarify the condition [B.6 (6)] applies to Meter Franking deposits for Single Piece mail. However, as with any business, deposits depend on the risk profile and An Post must be permitted to apply deposits deemed appropriate by our credit control function.

6.1.35. amend condition E.6(5) of the proposed Terms and Conditions by deletion in full or by amendment to clarify the specific charges which apply;

An Post accepts this recommendation to clarify condition E.6(5).

6.1.36. amend condition B.4(1)(c) of the SP T&Cs and the BM T&Cs and condition E.2(5) of the BM T&Cs to indicate that postal service users are not required to put a return address on the envelope (except in relation to a postal packets addressed to a postal address outside the State). The appropriate wording for inclusion is "It is recommended (although not required) that every Postal Packet should bear a return postal address";

An Post propose the following revised text:

"It is strongly recommended ~~(although not required)~~ that every Postal Packet should bear a return postal address".

6.1.37. amend the title of section C.3 to rename it "Undeliverable postal packets".

This has been referred to a copywriter and will be accommodated in the amendments to the Terms and Conditions.

6.1.38. amend condition C.3(3) of the proposed Terms and Conditions "What is deemed undeliverable?" by positioning as the first condition within Section C.3 to explain what precisely is considered undeliverable;

This has been referred to a copywriter and will be accommodated in the amendments.

6.1.39. amend condition C.3(1) of the proposed Terms and Conditions "Obligation to make one attempt at delivery" by moving either to section C.1 or inserting as a new section within section C;

This has been referred to a copywriter and will be accommodated in the amendments.

6.1.40. amend condition C.3(2) of the proposed Terms and Conditions by renaming to "What happens when an item is undeliverable?";

This has been referred to a copywriter and will be accommodated in the amendments to the Terms and Conditions.

6.1.41. amend the first sentence within condition C.3(2) of the proposed Terms and Conditions to read: “Where due delivery cannot be completed An Post will leave a docket at the postal address of the addressee indicating where and when the Postal Packet may be collected.”

An Post accepts this recommendation, subject to there being a delivery aperture at the address.

6.1.42. amend condition C.3(2) of the proposed Terms and Conditions to detail what happens to a postal packet in circumstances when An Post cannot deliver and the postal packet has not been collected by the addressee to include return to sender procedures; and to detail information explaining what will happen to a postal packet which (i) has an external return address and (ii) has no external return address;

An Post proposes to update the Terms and Conditions document to make clear what happens when mail should be returned to sender in the following circumstances, i.e.

- Mail with/without return addresses (on the cover or on the contents)
- Non collection by the addressee within the timeframe set out.

6.1.43. amend condition C.3(6) of the proposed Terms and Conditions by either appending to condition C.3(2) (subject to amendments required) or positioning as a standalone condition immediately following C.3(2);

This has been referred to a copywriter and will be accommodated in the amendments.

6.1.44. amend condition C.3(4) of the proposed Terms and Conditions by moving to a standalone section relating to underpaid mail;

This has been referred to a copywriter and will be accommodated in the amendments.

6.1.45. amend condition C.3 (3) of the proposed Terms and Conditions by correcting the typographical error "to be returned" and deleting the text "for whatever reason";

An Post accepts this recommendation, “to be returned” will be replaced by “to being returned” and the text “for whatever reason” will be deleted.

6.1.46. amend condition C.3(4) of the proposed Terms and Conditions by deleting the following text “or may be refused, detained, deferred, withheld, returned or disposed as prescribed under Section 47 of the 2011 Act.”;

As outlined in our response of 10 June 2015, An Post does not agree with ComReg’s interpretation and cannot accept this recommendation. That ComReg believes that the provisions of primary legislation can be amended by way of limitation through approval of the content by it of universal postal service Terms and Conditions is without legal basis. Section 47 of the 2011 Act, repeats the powers that were set out in the 1983 Act. The only difference is ComReg’s attempt to limit powers approved by the legislature to be exercised by An Post as USP in accordance with Section 47 of the 2011 Act. Underpaid mail does not comply with the Terms and Conditions and therefore Section 47(1) applies to such mail. This reflects the practice of An Post under previous and current legislation. ComReg’s interpretation of Section 47 of the 2011 Act and subsequent recommendation represents a departure in law and one which cannot be based on the powers available to ComReg to approve or amend the universal service Terms and Conditions.

An Post also rejects ComReg’s view, expressed in Consultation Document 15/112, that An Post currently collect underpaid postage amounts from the addressee, this practice ceased over fifteen years ago. In addition, ComReg Consultation Document 15/112 refers to the Terms and Conditions of other international postal service providers, namely Royal Mail. ComReg’s review of Terms and Conditions should note that article 13 of the Royal Mail United Kingdom Post Scheme (10 August 2015) clearly states:

“if an item is found not to meet the conditions set out in this Scheme or an item is found that indicates that insufficient (or no) postage and/or service fee has been paid for the service requested, we may decide at our discretion to do one of the following things set out below within a reasonable period of time.

13.2.1 Deliver the item to the address shown by the service requested.

13.2.2 Deliver the item to the address shown by an alternative service that we determine to be appropriate. In these situations the conditions of the service used to convey the item will apply.

13.2.3 Convey the item part of the way and inform the addressee that an item can be collected from a specified location (normally a Royal Mail Enquiry Office) by the addressee or their representative.

13.2.4 Treat the item as undeliverable. Details of how we may deal with undeliverable mail can be found in section 15.

13.2.5 Return the item to you.

13.2.6 Refuse to accept it.

13.2.7 If none of the above courses of action are possible we may deal with or dispose of the item at our discretion.

In all cases we may not accept any liability for that item. This provision also applies to items which have been found either in a Post Office® branch or on Royal Mail premises and which appears intended for posting.” (emphasis added)

This response should be considered in conjunction with our response to Draft Decision 6.1.31 (above).

6.1.47. amend condition C.3(5) of the proposed Terms and Conditions so as to quote directly from section 47 of the 2011 Act, and delete the reference to section 53 of the 2011;

An Post accepts this recommendation to quote directly from Section 47 of the Act.

6.1.48. amend condition C.3(6) by deletion of the text “under Section 47 of the 2011 Act” so condition C.3(6) reads as follows: “Where the name of the sender cannot be ascertained from the cover of a Postal Packet or its contents, the Postal Packet may be retained pending a claim from the sender or addressee. In the absence of any claim within

(a) a period of one (1) month of receipt of the Postal Packet; or

(b) three (3) months of posting the Postal Packet for delivery in the State; or

(c) six (6) months of posting for a delivery outside the State,

the Postal Packet may be disposed of by An Post.”.

An Post accepts this recommendation.

6.1.49. amend the proposed Terms and Conditions by insertion of the following text: “An Post will return to sender postal packets, for which delivery to the addressee was unsuccessful, on the working day following the expiration of retention periods provided in [section C.3(2)] of the terms and conditions.”

An Post accept this recommendation.

6.1.50. amend the proposed Terms and Conditions by insertion of the following text: An Post will return to sender undeliverable postal

packets, on the working day following the date of they are determined to be undeliverable.”

An Post accepts this recommendation, but will reword the condition set out by ComReg to reflect a correction of the text highlighted below:

“An Post will return to sender undeliverable postal packets, on the working day following the date ~~of~~ they are determined to be undeliverable.”

6.1.51. amend condition B.3 to read as follows: “A Postal Packet shall be delivered, in accordance with Section 6(3) of the 2011 Act, unless the addressee has requested an alternative service (e.g. Redirection Service or MailMinder Service), or alternative arrangements, that have been mutually agreed, are in place”;

An Post accept this recommendation, subject to such a request from a customer not constituting a “value added” feature which would result in increased costs for An Post.

6.1.52. amend condition B [C].3 to read as follows: “..In apartment and office buildings, where a bay of delivery boxes is provided in the lobby, a Postal Packet shall be delivered, in accordance with Section 6(3) of the 2011 Act, to each individual box provided”;

ComReg refers to this change applying to condition C.3 in paragraph 255 of document 15/112 and then refers to condition B.3 in the above recommendation. ComReg must clarify this. However, An Post accepts this recommendation subject to the relevant provisions of the 2011 Act and notes that the obligation to deliver is subject to other conditions including by way of example that delivery cannot be made if safe and secure access is not provided to An Post.

6.1.53. amend condition D.2(1) to read: “Any complaints or claims for loss, damage or delay with regard to a postal packet can be made to An Post. Such complaints or claims can be made to An Post’s dedicated customer service team. Complaints can be made in person [An Post to insert where this can be done], by telephone [An Post to insert centralised number], or in writing (regular post or email) [An Post to insert addresses of centralised office]”;

An Post accept this recommendation. The contact details section of the revised Terms and Conditions will be updated as follows:

“Where necessary, Customers with a disability can arrange to make complaints in person through the An Post Access Officer (telephone (01) 705 7388).”

6.1.54. amend condition D.3 (4) to delete the text “or the cost of replacement or reproduction of the packaging whichever is the lesser” ;

An Post accepts this recommendation.

6.1.55. amend condition D.3 (4) to provide that compensation for delay for Secure Post (Insured) is also available;

An Post accepts this recommendation.

6.1.56. amend condition D.3(6)(e) by deletion from the proposed SP T&Cs;

An Post propose to amend this clause to read:

“in respect of the failure or delay, on the part of the customer, in presenting documentation for any Customs Authority.”

6.1.57. amend condition D3(6)(c) of the SP T&Cs to remove the reference to “Documents”;

An Post accepts this recommendation, with the exclusion of documents of no pecuniary value.

3. Conclusion

As indicated in this detailed response, An Post agrees with the majority of ComReg's comments and proposals. However, ComReg should be mindful of a number of proposals that we believe are outside of the scope of ComReg's legal powers even to direct. We also believe that a number of these proposals will increase the cost of providing the USO, placing the sustainability of the provision of this key service under threat, and have a negative impact on user's needs. An Post does not accept that implementation of these proposals is in the general interest of the customer or An Post and requests that ComReg consider these proposals further.

In considering this response An Post anticipates that ComReg will give due consideration to the issues raised and, in addition to meeting the reasonable needs of postal users, that ComReg is cognisant of the potential impact of any proposals on the financial sustainability of the USO.

An Post is prepared to continue to work with ComReg prior to adopting its final amendments to its Terms and Conditions, which it hopes ComReg will find itself in a position to approve. This is particularly so given that there is no customer dissatisfaction.

An Post also submits that ComReg should not rush into a Decision when An Post is prepared to continue to work with ComReg to finalise Terms and Conditions, particularly given that there is no customer dissatisfaction and An Post has significant doubts about the legal basis on which ComReg purports to be relying upon.