



Commission for  
**Communications Regulation**

## Consultation Paper

### **Regulation of Postal Services – Postal Service Authorisations, Reserved Area Controls & Levy**

#### Proposed Procedures

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(current consultations), to arrive on or before **29 October 2003**,  
to:

**Ms. Elaine Kavanagh**  
**Commission for Communications Regulation**  
**Irish Life Centre**  
**Abbey Street**  
**Freepost**  
**Dublin 1**  
**Ireland**

**Ph: +353-1-8049600    Fax: +353-1-804 9680    Email:**  
[postal@comreg.ie](mailto:postal@comreg.ie)

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**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](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

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## **1 Foreword**

In 1999 the first steps were taken to open up postal markets to competition. Initially items of correspondence weighing less than 350g and priced at less than €1.90 remained within An Post’s “reserved area” or “monopoly”. Since then the range of services that are “reserved” to An Post have been further reduced – currently only the carriage of items of correspondence weighing less than 100g and priced by An Post at less than €1.44 are reserved to An Post. From January 1<sup>st</sup> next all outgoing cross-border mail will be fully open to competition.

In the light of these developments the Minister has decided that ComReg must put some very simple authorisation procedures in place to ensure that there is a record available of those operating in the market place. Once authorisations have been granted to the operators in accordance with the current regulatory framework, ComReg can ensure that the operators comply with their obligations in respect of the essential requirements (e.g. the confidentiality of correspondence, security of the postal network and treatment of undelivered mail) and that they provide a proper complaints and redress system.

Unlike some other countries where it is necessary to secure a licence to provide services in direct competition with the designated universal service provider, it will still be possible to establish a competing service (outside of the reserved area) without formality. It will only be necessary to comply with the very simple authorisation process when turnover exceeds €500,000.

This Consultation Paper sets out ComReg’s proposals in this regard and for the related requirement that ComReg must put in place controls and procedures to ensure that the services reserved to An Post are respected.

**Etain Doyle,**  
**Chairperson.**

## 2 Executive Summary

### 2.1 Background

The EU Postal Directives<sup>1</sup> make provision for the liberalisation of postal markets. Any commercial undertaking is free to provide postal services except where these are specifically “reserved” to the designated universal service provider(s). There are specific limitations on the services which may be reserved, and there is also provision for Member States to introduce general authorisations, and in certain instances individual licensing.

The European Communities (Postal Services) Regulations, 2002, S.I. 616 of 2002, opens up all outgoing cross-border mail to competition from 1 January 2004, makes provision for most postal service providers to put in place complaints and redress procedures, and requires providers of postal services with a turnover in excess of €500,000 to obtain a “*postal service authorisation*” from ComReg.

This paper sets out ComReg’s proposals for issuing these postal service authorisations, ensuring that the services reserved to An Post as the designated universal service provider are respected, and for modifying the postal levy to take account of the obligations imposed by the Government on other postal service providers.

The proposals are intended to be as simple as possible, consistent with a light handed regulatory approach, while ensuring compliance with the legislative requirements.

### 2.2 Proposed Authorisation Procedures

Briefly there will be an application form giving details of the applicant and the postal services provided, which must be accompanied by a written declaration that the services do not infringe the reserved area of An Post.

When ComReg is satisfied that all the documentation required has been submitted and that the services provided do not infringe the reserved services it will grant a postal service authorisation to the Applicant.

In cases where the undertaking has previously applied for an authorisation and has been refused, or has held an authorisation which was withdrawn, ComReg will consider whether there has been a change in circumstances that would warrant reviewing the previous decisions in accordance with the requirements of natural and constitutional justice.

Once the authorisation is granted details of the name and address of the undertaking and the services provided will be entered in a register of authorised postal service

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<sup>1</sup> 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 (‘the First Postal Directive’). OJ L 15 21.1.1998, p. 14, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (‘the Second Postal Directive’) OJ L 176 5.7.2002, p.21.

providers which will be available on the ComReg website and at ComReg's offices.

ComReg has a duty to monitor compliance by holders of Postal Service Authorisations with their obligation to draw up procedures to deal with incorrectly delivered mail, and the security and confidentiality of their postal service, and the obligation to introduce complaints and redress procedures in accordance with guidelines laid down by ComReg (published in document ComReg 03/50 - Appendix D).

ComReg will encourage Applicants to submit these procedures with the Application, or as soon as possible after the authorisation has been granted. In any case where these obligations have not been complied with within 6 months of the grant of the Postal Services Authorisation ComReg will initiate the procedures to withdraw the authorisation.

### **2.3 Reserved Area Controls.**

The second Postal Directive imposed on the national regulatory authorities the particular task of *“ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. ...”*.

ComReg's procedures for ensuring that the reserved services are respected will be fully integrated with the authorisation procedures. Specific tests (set out in section 5) will be applied to determine whether a proposed service infringes the reserved services.

If ComReg decides that the description of services to be provided is consistent with the declaration not to infringe the reserved services the authorisation will be granted and details will be posted on ComReg's website.

On the other hand if ComReg decides that the services to be provided infringe An Post's reserved area the authorisation will be refused and the undertaking will be free to challenge this decision in the manner specified in Regulation 7 (6), ie, by way of appeal to the High Court.

### **2.4 Revision of Postal Levy.**

Currently the Postal Levy is only paid by An Post. The Communications Regulations Act, 2002, provides that it may be levied on all providers of postal services. With the introduction of authorisations it is appropriate to revise the levy scheme to provide that all holders of postal services authorisations should pay the levy.

To make the scheme fair and equitable it is envisaged that a levy based on a percentage of turnover within the state should be applied to all holders. Different levy percentages will be applied to universal service providers (one quarter of one percent) and other postal service providers (three twentieths of one percent with a minimum charge of €1,000). Operator's views on the alternative flat rate levy or a levy rate of 0.25% on all providers are also sought.

## 3 Introduction

### 3.1 Background

The Commission for Communications Regulation (ComReg) is responsible for the regulation of Universal Postal Services in Ireland in accordance with National and European legislation. ComReg is the National Regulatory Authority (NRA) for the purposes of that legislation. In carrying out the functions of that legislation, ComReg is obliged to take into account the views of interested parties.

#### 3.1.1 Transposition of the first Postal Directive

The first Postal Directive made provision for the liberalisation of postal markets. Any commercial undertaking is free to provide postal services except where these are specifically “reserved” to the designated universal service provider(s). This statement is of course subject to the requirements of the general law and/or the requirements of regulatory and other bodies and persons, other than ComReg.

There are specific limitations on the services which may be reserved. There is also provision for Member States to introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements<sup>2</sup> or, for services which are within the scope of the universal service, to introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service.

#### 3.1.2 Transposition of the second Postal Directive

The second Postal Directive further restricted the services that may be “reserved” to the designated universal service provider(s). It also:

- made provision for Member States to require all postal service providers ensure that *“transparent, simple and inexpensive procedures are drawn up for dealing with users’ complaints, .. to enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.”*; and
- imposed on the national regulatory authorities the particular task of *“ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. ...”*.

In transposing the second Postal Directive into Irish Law<sup>3</sup> the Minister required:

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<sup>2</sup> The Directive defines the “essential requirements” as general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods and, where justified, data protection, environmental protection and regional planning.

<sup>3</sup> European Communities (Postal Services) Regulations, 2002, (‘the Regulations’) SI 616 of 2002

- all postal service providers with an annual turnover of €500,000, exclusive of VAT, to obtain a “*postal service authorisation*” from ComReg; (Regulation 7 (1) of the Regulations)
- all applicants for a “*postal service authorisation*” to provide ComReg with “*a written declaration that the postal services provided by the applicant do not infringe the reserved area*”; (Regulation 7 (2) of the Regulations)
- all holders of a postal service authorisation ‘*shall draw up procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided by the holder*’; (Regulation 7 (3) of the Regulations)
- all postal service providers with an annual turnover of €500,000, exclusive of VAT, to draw up “*transparent, simple and inexpensive procedures for dealing with users complaints*” in accordance with guidelines laid down by ComReg; (Regulation 15 (1) of the Regulations) and
- ComReg “*where appropriate, and after consultation with the Minister, (to) establish controls and specific procedures to ensure that the reserved services are respected.*” (Regulation 17 (2) of the Regulations)

### 3.1.3 The Communications Regulation Act, 2002

S 10 (1) (c) of the Communications Regulation Act, 2002, (‘the Act of 2002’) conferred ComReg with a specific function of ensuring compliance by providers of postal services with obligations in relation to the provision of postal services. Section 30 (2) of the Act of 2002 provides that:

*“For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in relation to postal services, the Commission may make an order imposing a levy on providers of postal services.”*

### 3.1.4 Ministerial Policy Directions

Under Section 13 (1) of the Communications Regulation Act, 2002, ComReg must comply with Ministerial Policy Directions. In this regard ComReg is required to ensure that the costs incurred by it in effectively carrying out its functions in relation to the postal market are minimised, consistent with best practice in other Member States of the European Community, and, subject to any different conditions that may exist, should not be out of line with the cost of regulation in such Member States.

The Direction also requires ComReg to have regard to the Department of Communications, Marine and Natural Resource’s Statement of Strategy 2003-2005, which provides for ‘*a light handed and competitive regulatory environment to facilitate the development of an efficient and competitive postal industry.*’



This is explained as follows: *‘significant private operators already exist in the liberalised area of the postal market and it is important that liberalisation is not used as a pretext to increase the regulatory burden on these companies.’*

### 3.1.5 ComReg’s proposals

The proposals set out in this paper for introducing postal service authorisations, ensuring that the services reserved to An Post as the designated universal service provider are respected, and for modifying the postal levy to take account of the obligations imposed by the Minister on other postal service providers, are intended to be as simple as possible, consistent with a light handed regulatory approach, while ensuring compliance with the legislative requirements. We hope they will commend themselves to all interested parties.

## 3.2 Format of this paper

ComReg is consulting on the proposed procedures for granting Postal Service Authorisations to providers of postal services. The proposed procedures are set out in Section 4.

The paper will also deal with the controls which ComReg must establish to ensure that the area reserved to An Post is respected. The proposed approach to this matter is dealt with in Section 5.

A new levy order will be required to take effect from 1 January 2004 to take account of the additional regulatory work for ComReg arising from the new obligations set out in the European Communities (Postal Services) Regulations, 2002, S.I. 616 of 2002. The proposed structure and arrangements for the collection and payment of the postal levy are discussed in Section 6.

Question relating to the Impact of these proposals are set out in Section 7.

Details about submitting comments on any aspect of this paper and the timescale for doing so can be found in Section 8 of this paper entitled ‘Submitting Comments’.

The principal legal provisions governing the relevant aspects of postal regulation which are discussed in this paper are set out in Appendix A.

## 4 Proposed Authorisation Procedures

### 4.1 General Principles

The European Communities (Postal Services) Regulations, 2002, SI No. 616 of 2002 ('the Regulations') require "*a postal service provider (other than a universal service provider) with an annual turnover of more than €500,000, exclusive of VAT,*" to apply for a "*postal service authorisation*" to provide a postal service.

The Regulations impose a number of obligations on postal service providers that go with this:

- (i) the undertaking must give, before the authorisation is granted, a written declaration that the postal services provided do not infringe the reserved area of An Post (Regulation 7(2))
- (ii) the undertaking must draw up, after the authorisation is granted, procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided (Regulation 7(3)).
- (iii) a postal service provider with an annual turnover of more than €500,000, exclusive of VAT, must draw up Complaints procedures in accordance with guidelines laid down by ComReg (Regulation 15).

Neither the Irish Regulations nor the proposed procedures require any service provider to obtain a (explicit) decision from ComReg before they can provide postal services. Indeed the law is that they are entitled to enter the market, and build up their business turnover to €500,000 before having to apply for or hold an authorisation.

Nevertheless the Irish Regulations requires ComReg to make a decision before granting the authorisation:

*"7(2) Where the Regulator is satisfied that that an applicant under paragraph (1) can provide a postal service,...."*

The basis on which ComReg should make that decision is not explicitly set out in the Regulations. The proposals set out in this paper take into account that:

- The applicant will (in almost all cases) be already providing services, and
- The Regulations do not give ComReg any power to impose conditions - those, such as they are, are laid down in legislation, and are confined to guaranteeing compliance with the essential requirements (i.e. the confidentiality of correspondence, security of the postal network and, where justified, data protection, environmental protection and regional planning).

The proposal is that the ComReg decision should always be to grant the authorisation, except in two circumstances:

- (a) Where an applicant has had a previous application refused, or an authorisation withdrawn. It is necessary to have this control mechanism, otherwise the decision to withdraw the authorisation (for non compliance with conditions imposed by law) could be set aside by applying for a new authorisation and carrying on business until the new automatically granted authorisation was withdrawn: and
- (b) Where, on the basis of the documentation provided, and any further information sought, there were grounds for believing that the services provided infringed the reserved area. It should be noted that the provision of a declaration that the services provided do not infringe the reserved area is the only condition precedent to the granting of an authorisation.

In cases where the undertaking has previously applied for an authorisation and has been refused, or has held an authorisation which was withdrawn, ComReg will consider whether there has been a change in circumstances that would warrant reviewing the previous decisions in accordance with the requirements of natural and constitutional justice.

It should be noted that although the Regulations require most postal service providers to draw up procedures about confidentiality, complaints procedures, etc., refusal to supply ComReg with a copy of these at the time of application for a postal service authorisation would not be a ground for refusing to grant the authorisation. In practice non-compliance with these requirements will be dealt with after the fact ie, if the required procedures are not put in place within six months, by way of withdrawal of the authorisation.

#### **4.2 Available to all postal service providers**

Although the Regulations only require postal service providers with a turnover in excess of €500,000, excluding VAT, to hold a postal services authorisation there will be postal service providers with a lower turnover who may wish to apply for an authorisation. Reasons may include:

- Need to ensure that the authorisation is in place before turnover exceeds the limit set out in the Regulations;
- Customers may be more willing to do business with an ‘authorised’ rather than an “unauthorised” postal service provider;
- A desire to take part in any workshops, seminars etc organised for holders of postal service authorisations;

On the other hand the liability to pay the postal levy may deter applications, particularly from very small undertakings operating in a specific geographic area only.

### **4.3 Need for information about the development of the postal sector**

In order to monitor the evolution of the postal market and, fulfil its statutory objective under the Communications Regulation Act 2002 to promote the development of the postal sector, ComReg needs information about turnover, business volume and staff employed. Also the European Commission, Eurostat, UPU, etc have asked ComReg for information about how the market is evolving.

The proposal therefore is that holders of postal services authorisations should provide a limited range of information, in line with that currently being sought by Eurostat, on the basis that ComReg would keep it confidential and only publish aggregated data from which it would not normally be possible to identify any operator. (See Section 6 which deals with this matter in the context of the Levy)

### **4.4 Proposed procedures**

The proposal is to introduce a very simple procedure to enable an undertaking to obtain a “postal service authorisation” allowing it to provide a postal service on or after 1 January 2004.

- (i) The undertaking should submit an application to ComReg including name and address and an indication of the services provided / to be provided, specifying whether or not they are within the scope of the universal service. (see Appendix B).

The application should be accompanied by a written declaration that the postal services provided do not infringe the reserved area of An Post. (see Appendix C).

- (ii) On receipt of the application and accompanying documents ComReg will assess the application before granting a postal services authorisation to the Applicant. ComReg will inspect whether all the documentation required has been submitted, paying particular attention to whether the description of the services provided / to be provided is consistent with the written declaration that the postal services provided do not infringe the reserved area of An Post and ensuring that the undertaking has not previously applied for a postal services authorisation. Having satisfied itself that these matters are in order, ComReg will grant a postal service authorisation to the Applicant. (see Appendix D for form of authorisation).
- (iii) If the criteria as specified in (ii) above for granting a postal services authorisation are not met ComReg will ask the applicant for whatever additional information may be necessary before granting or refusing an authorisation. In cases where the undertaking has previously applied for an authorisation and has been refused, or held an authorisation which was withdrawn, ComReg will consider whether there has been a change in circumstances that would warrant reviewing the previous decision.

- (iv) Once the authorisation is granted details of the name and address of the undertaking and the services provided (or to be provided) will be entered in a register of authorised postal service providers which will be available on the ComReg website. A list of all authorised providers of postal services will also be available for inspection at ComReg's offices.
- (v) A postal service provider (other than a universal service provider) with an annual turnover of more than €500,000, exclusive of VAT, must apply for a postal services authorisation. A postal service provider with a lower turnover is not obliged to apply for an authorisation but it is proposed that if ComReg receives applications from such undertakings it will process them in the normal way.
- (vi) When the obligations to draw up procedures to deal with incorrectly delivered mail, and the security and confidentiality of their postal service, and the obligation to introduce complaints and redress procedures in accordance with guidelines laid down by ComReg, have not been complied with within 6 months the Postal Services Authorisation will be withdrawn.
- (vii) ComReg also has the power to withdraw the authorisation from a holder where there is evidence that the undertaking has not complied with the written declaration to respect the reserved area given to An Post, has failed to implement the Code of Practice to deal with customer complaints and redress or has failed to implement the procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided/to be provided subject to the requirements of natural and constitutional justice.

Regulation 7 provides ComReg with the power to take proceedings should an undertaking to whom the regulations apply provides postal services without obtaining an authorisation from ComReg. (This provision enables ComReg to conduct its compliance function of the postal market)

Regulation 7 also makes provision whereby an applicant, who has been refused an authorisation and appeals that decision, is not authorised to provide postal services pending the outcome of the appeal.

However, the holder of an authorisation may continue to provide postal services pending the outcome of any appeal against a decision to withdraw the authorisation. (Full details are set out in Appendix A)

#### **4.5 Register of Authorised Postal Users**

It is the intention of ComReg to publish a list of all Authorised Postal Service Providers on ComReg's website. ComReg will also make a list of all Authorised Providers of Postal Services available in hard copy for inspection at ComReg's offices. This will facilitate users of mail services in that it will be clear who is and who is not registered by ComReg. Contact details containing name, address, telephone and facsimile numbers, and email address will be provided for ease of

access. ComReg will also publish the Authorised Service Providers contact details for lodging complaints and obtaining redress if required. The idea is to provide the user with as much information as possible to facilitate choice in which provider it may contact for services.

#### **4.6 Monitoring Compliance with the obligations on holders of Postal Service Authorisations**

ComReg has a duty to monitor compliance by holders of Postal Service Authorisations with the obligation to guarantee compliance with the essential requirements (i.e. the confidentiality of correspondence, security of the postal network and, where justified, data protection, environmental protection and regional planning) and the obligation to introduce complaints and redress procedures in accordance with guidelines laid down by ComReg (published in document, ComReg 03/50 – Appendix D). This document may be downloaded from ComReg's website or copies may be obtained by contacting ComReg by telephone, + 353 1 804 9600 or facsimile, + 353 1 804 9665. ComReg will encourage Applicants to submit these procedures with the Application, or as soon as possible after the authorisation has been granted.

#### **4.7 Submission of applications**

ComReg intends to accept applications from postal service providers as soon as the consultation period has ended and a Response to Consultation has been published. In essence 4 weeks will be allowed for submissions to ComReg's proposed approach as set out in this paper. Responses will be accepted until close of business, 29<sup>th</sup> October, 2003. A decision and response to consultation should therefore be published sometime between mid to end of November, 2003 and applications will be accepted and processed from that date forward.

**Q. 1. Do you agree that the proposed arrangements for issuing Postal Service Authorisations are appropriate and achieve the objectives of the legislation? If not, please state your reasons.**

**Q. 2. (i) Do you agree that 6 months is a reasonable time to allow Authorised Postal Service Providers to submit procedures required under Regulation 7 (3) and a code of practice for dealing with customer complaints and redress as required by Regulation 15 (1)? If you disagree, please state what period you think is appropriate, with your reasons.**

## 5 Reserved Area Controls

### 5.1 General Principles

The second Postal Directive imposed on the national regulatory authorities the particular task of “*ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. ...*”. The Regulations require that all applicants provide ComReg with a written declaration that the postal services provided by the applicant do not infringe the reserved area and that ComReg should also establish controls and specific procedures to ensure that the reserved services are respected.

The Reserved Area comprises those services which only An Post can provide. The scope of this area is laid down in Regulation 8 of the Regulations. It should be noted that this is quite limited in that it only applies to items of correspondence, ie a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping but does not include books, catalogues, newspapers and periodicals. From 1 January 2004 all outbound cross-border services will be outside the scope of the reserved area.

The European Commission, issued a Notice dealing with the competition law aspects of the postal market<sup>4</sup>. The Notice sets out the Commission's position in relation, inter alia, to the reserving of special and exclusive rights to state bodies, such as An Post. The Notice highlights the duties of a dominant postal operator such as An Post. If An Post does not provide a service that meets the particular needs of customers for items which fall within the scope of the reserved area, it may be in breach of competition law duties, and the reservation itself may come into question.<sup>5</sup>

Granting of authorisations would be without prejudice to ComReg's duty to ensure that the area reserved to An Post is respected.

### 5.2 Procedures to ensure that the reserved services are respected:

The Regulations make provision for one very simple procedure to ensure that the reserved area is respected and is fully integrated with the authorisation procedures. In practice,

- (i) A written declaration that the postal services provided do not infringe the reserved area of An Post will be submitted with each application.
- (ii) A brief description of the services will also be provided. This description will be examined to ensure that it is consistent with the declaration.

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<sup>4</sup> 'Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services', COM (98/C 39/02)

<sup>5</sup> Case C-41/90 Klaus Höfner and Fritz Elser v. Macroton [1991 ECR I-5889]

- (iii) If ComReg decides that the description of services to be provided is consistent with the declaration the authorisation will be granted and details will be posted on its website/made available for inspection at ComReg's offices.
- (iv) If ComReg decides that the description of services to be provided is not consistent with the declaration the authorisation will be refused and the undertaking will be free to challenge this decision in the manner specified in Regulation 7. ComReg would not make such a decision without first giving the undertaking the opportunity to clarify the information submitted.
- (v) ComReg will apply a specific set of tests in determining whether a service respects the reserved area of An Post:
  - (a) Is the service confined to the conveyance of books, catalogues, newspapers, periodicals or postal packages containing merchandise with or without commercial value?
  - (b) Is the service confined to the conveyance of items weighing more than 100g?
  - (c) Is the services confined to services with value added features, e.g. day certain or time certain delivery?
  - (d) Is the service confined to unaddressed items?
  - (e) Is the price per item in excess of €1.44<sup>6</sup>?

NB The weight and price limits will change from time to time in accordance with legislation.

- (vi) In most cases there will be a clear cut decision based on these tests, but in certain marginal cases ComReg will, at its discretion, give both the applicant and An Post an opportunity to make written submissions before ComReg makes its decision.

ComReg is of the view that additional procedures are not warranted at the present time.

**Q. 3. Do you agree that the proposed arrangements for ensuring that the services reserved to An Post are respected will give certainty to both users and service providers while meeting their objectives? If not, please state your reasons.**

<sup>6</sup> That is three times the public tariff for an item of correspondence in the first weight step of the fastest category provided by An Post.



## **6 Revision of Postal Levy**

### **6.1 Introduction**

Section 30 of the Communications Regulations Act, 2002 provides that a levy may be imposed on all providers of postal services for the purposes of meeting expenses properly incurred by the Commission for Communications Regulation in the discharge of its functions in respect of postal services.

The functions of the Commission for Communications Regulation in respect of postal services include, inter alia, monitoring compliance by the designated universal service provider(s) with the Regulations relating to the following:

- Provision of a universal service involving the permanent provision of a postal service of a specified quality;
- Tariffs for each of the services provided by a universal service provider which form part of its universal service;
- Agreements on terminal dues for intra-community cross border mail to ensure the cross-border provision of the universal service;
- The accounting procedures of a universal service provider;
- Quality-of-service standards for the universal service, paying, in particular, attention to routing times and to the regularity and reliability of services,
- Complaints and Redress procedures, and
- Putting controls in place to ensure that the area reserved to An Post is respected;

There are other functions, and statutory objectives, that extend beyond those services provided by the universal service provider(s)

- Putting procedures in place to authorise other providers of postal services;
- Monitoring compliance by holders of postal service authorisations with their obligations, including procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided by the holder.
- Complaints and Redress Procedures
- International developments with regard to postal services
- Its statutory objective to promote the development of the postal sector.

The current Postal Levy No. 3 Order 2002, S.I. No. 549 of 2002, provides that only An Post, as designated universal service provider, must pay the levy. However, the levy order states that should there be a need to revise the levy at a later stage, then there is provision to review the levy amount in such circumstances. With the introduction of a process for authorising postal service providers, effective from 1 January 2004, it is timely to revise the levy order to provide that all providers of postal services should pay the levy to ComReg in the discharge of its functions in respect of postal services.

It is intended to make a new scheme based on a similar structure as agreed to in the past. As such to ensure that the scheme is fair and equitable it is proposed that a levy based on a percentage of relevant turnover within the State should be applied to all providers of postal services. However given the significant difference in the scope of regulatory objectives it would be inequitable to require providers of postal services, other than the designated universal service provider(s), to pay at the same rate as the designated universal service provider(s).

It is estimated that the cost of regulating the postal sector will be in the region of €1.25m. This amount has been based on the current cost of regulation to ComReg in the discharge of its functions as listed above in the opening paragraph as well as taking on board the cost of the additional work necessary to put a process in place to authorise providers of postal services. It is appreciated that the regulatory functions in respect of universal service provider (s) requires significantly more resources than the more limited functions relating to other service providers. The levy proposals should therefore reflect this cost difference.

It is estimated that this cost could be recouped by requiring designated universal service provider(s) to pay the levy as 0.25% (one quarter of one percent) of relevant turnover for a given levy year, and by requiring authorised service providers providing postal services other than as a designated universal service provider to pay a levy as 0.15% (three twentieths of one percent) of relevant turnover for a given levy year, with a minimum charge of €1,000 per annum for each postal service provider authorised by ComReg<sup>7</sup>.

Section 6.5 below sets out the arrangements for adjusting the amount of the levy payable to ensure that it does not exceed the cost incurred by the Commission. This will be especially important in the first year because, while ComReg is aware of the costs it is likely to occur and can make a very accurate assessment of the amount of levy payable by the universal service provider, the estimate of levy payable by holders of postal services authorisations may need to be revised. To this end ComReg asks respondents to submit in confidence an estimate of their relevant turnover so that ComReg's response to this consultation can be based on the best available estimates.

An alternative proposition, in the case of authorised service providers providing postal services other than as a designated universal service provider, is to charge a flat rate fee per annum by ComReg, irrespective of turnover. A levy of the order of

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<sup>7</sup> The Telecoms levy has been set at 0.20% since it was established in 1997.

€22,500 pa would appear to raise the same amount as the 0.15% levy using an average turnover of €15m per annum. ComReg considers the turnover related levy to be the most equitable.

One of the disadvantages of this alternative is that smaller operators (eg those with less than 50 employees) might find a flat rate levy onerous. A way of overcoming this would be to have a separate flat rate of say €1,000 per annum for all of the smaller operators.

NB It should be noted that there is no obligation on postal service providers with a turnover of less than €500,000 to obtain an authorisation and therefore to pay the levy.

## 6.2 Structure of the Levy

The Commission for Communications Regulation proposes to make a revised levy order before the end of 2003. As ComReg is required to have a process in place by 1 January 2004 so that postal services providers can apply for a postal services authorisation, the revised levy order is intended to facilitate the payment of a levy by all providers of postal services. The following structure is proposed:

- The levy amount shall be that amount necessary for the purposes of meeting expenses properly incurred by the Commission for Communications Regulation in the discharge of its functions in respect of postal services.
- The Levy Year shall be defined as the financial year of the Commission for Communications Regulation.
- The levy amount shall be expressed as a percentage of the relevant turnover of a provider of postal services.
- The levy percentages to be applied to relevant turnover are as follows:
  - (a) Designated universal service provider(s) will be liable to pay the levy as 0.25% of relevant turnover for a given levy year. (no change from present arrangements)
  - (b) Authorised service providers providing postal services other than as a designated universal service provider will be liable to pay the levy as 0.15% of relevant turnover for a given levy year, with a minimum charge of €1,000 per annum.
- The levy percentage will be reviewed as necessary and where appropriate, a revised levy order will be issued.
- The levy will be payable in equal instalments on or before the last day of each quarter of the levy year.

- The levy will be applied pro rata for providers who obtain an authorisation mid-month, mid-quarter or mid-year. Therefore the first quarterly payment will be calculated from the date the authorisation has been granted to the end of the next quarter of the levy year and from there, it will be payable in equal instalments for the other remaining quarters of the levy year.
- Relevant Turnover shall be defined as the gross revenue, excluding value-added tax, of the postal service provider in respect of postal services as reported in the financial statements for the most recent financial year of the postal service provider.
- Postal Service Providers will be required to submit a Statement of Relevant Turnover certified by its auditor within 21 weeks of its financial year end – see section 6.4.

**Q. 4. Do you agree with the structure for the collection of the levy as outlined above, or should everyone pay the levy at the same rate (0.25%) irrespective of the different regulatory obligations? If you provide postal services other than as a designated universal service provider would you prefer a flat rate levy to the proposed levy based on a percentage of turnover, or is there any other basis for sharing out the cost of regulation? Please state your reasons, and submit in confidence an estimate of your relevant turnover so that ComReg's response to this consultation can be based on the best available estimates.**

### **6.3 Persons and organisations liable to the levy**

It is proposed that the universal postal service provider(s) designated by the Minister under Regulation 4 (2) of S.I. 616 of 2002 and any holder of a postal service authorisation issued by ComReg under Regulation 7(2) of S.I. 616 of 2002 will be liable to pay the levy. Postal Service Providers who do not hold a postal service authorisation, and are not required under Regulation 7(1) to hold one, will be exempt from paying the levy. Those who are not required to hold authorisations but choose to apply for one will also be liable to pay the levy.

**Q. 5. Do you agree that Postal Service Providers who do not hold a postal service authorisation, and are not required under Regulation 7(1) to hold one, should be exempt from paying the levy? If not, please state your reasons and suggest how such operators should be identified.**

#### **6.4 Information to be supplied annually**

Universal Service Providers will be required to submit a Statement of Relevant Turnover certified by their auditors within 21 weeks of their financial year end together with a copy of their annual report and accounts disclosing the turnover for postal services in accordance with SSAP 25 and/or IAS 14.

Other Postal Service Providers liable to the levy will be required to submit a Statement of Relevant Turnover certified by their auditors within 21 weeks of their financial year end. In addition they are requested to provide additional information showing how much of this turnover is in respect of services within the scope of the universal service and how much is outside the scope, together with details of the number of employees and number of items carried, if possible further broken down by type of item carried, ie items of correspondence, Direct Mail, other Printed Matter and Packets/Parcels. ComReg will ensure that this information will be kept confidential, that it will only be used to calculate the levy payable and to collate aggregated data in respect of the evolution of the postal sector. Data on individual companies will not be released outside of ComReg and aggregated data will only be published when it is not normally possible to identify a single participant in the market.

ComReg would prefer to deal with the collation of information about the evolution of the postal market on a voluntary basis but it should be noted that Section 39 of the Communications Regulation Act, 2002, does give ComReg specific powers to obtain information necessary for the exercise by the Commission of its functions.

Appendix E provides a basic summary of information that Eurostat requests in its questionnaire to Regulators to establish the developments/evolution taking place in the postal markets. ComReg would appreciate industry opinions as to the feasibility of providing such information in the manner set out in Appendix E and the regularity of providing such, ie on a quarterly, annual basis?

**Q. 6. Do you agree with the proposed arrangements for determining the turnover on which the levy should be based? If not, please state your reasons.**

**Q. 7. Do you agree that Postal Service Providers who hold a postal service authorisation should supply additional information to enable ComReg to monitor the evolution of the postal sector? If not, please state your reasons.**

## **6.5 Adjustments to the amount to be levied**

In accordance with Section 30(5) of the Communications Regulations Act, 2002 any surplus of levy income over the expenses incurred by ComReg in the discharge of its functions relevant to that levy in a particular financial year shall either—

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

The levy order will make provision to review the levy amount should there be a need to revise the levy in the light of changed circumstances or more accurate estimates of the turnover of holders of postal service authorisations.

## **7 Impact Assessment**

The proposals in this paper are about how ComReg proposes to implement legislation rather than about imposing additional obligations on postal service providers. Nevertheless the specific proposals for calculating the postal levy will have an impact on postal service providers who have not hitherto been liable to the levy. Question 4 asks for specific information to be supplied, in confidence, to enable ComReg to satisfy itself that the levy proposals are soundly based. There are two additional questions to enable ComReg to assess the impact of its proposals.

**Q. 8. Are there alternative ways of implementing the requirement to introduce Postal Service Authorisations, and to put in place procedures to ensure that An Post's reserved area is respected, and would they have a greater or lesser impact on your company?**

**Q. 9. What is your assessment of the impact of these measures as a whole on your company?**

## **8 Submitting Comments**

All comments are welcome. However, it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 1 October 2003 to 29 October 2003 during which time the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the procedures for granting Postal Authorisations, the controls to be put in place to ensure the reserved area is respected, and the proposals to revise the Postal Levy Order. It will then publish a report in November 2003 on the consultation which will, inter alia, summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices.

Please note ComReg will publish all submissions with the Response to Consultation, subject to confidentiality. ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are therefore requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.



## Appendix A – Legislation

### **The European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002)**

The EC “Postal Directive”<sup>8</sup> establishes a harmonised regulatory framework for postal services throughout the European Union and for securing improvements in the Quality of Service provided, and defines a decision-making process regarding further opening of the postal market to competition. It was transposed into national law by the European Communities (Postal Services) Regulations, 2000, S.I. No.310 of 2000, which have now been revoked and replaced by the European Communities (Postal Services) Regulations, 2002, S.I. No.616 of 2002 ("the Postal Regulations"),

These Regulations set out a very broad framework of the universal service requirement. A function of ComReg is to put flesh on the bones of these Regulations; taking cognisance of the modern needs of business and domestic consumers in tandem with ensuring that the Universal Postal Service remains a protected and viable service nationwide going into the future.

#### **Universal Service**

*Regulation 4 of SI 616 of 2002 states:*

4. (4) Universal service shall include the following minimum facilities:
  - (a) the clearance, sorting, transport and distribution of postal items up to 2 kilogrammes;
  - (b) the clearance, sorting, transport and distribution of postal packages up to 20 kilogrammes;
  - (c) services for registered items; and
  - (d) services for insured items within the State and to and from all countries which as signatories to the Convention of the Universal Postal Union declare their willingness to admit such items whether reciprocally or in one direction only.
- (5) The minimum and maximum dimensions for the postal items in question shall be those laid down in the 1994 Seoul Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union.
- (6) The universal service shall cover both national and cross-border services.

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<sup>8</sup> 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. OJ L 15 21.1.1998, p. 14, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services OJ L 176 5.7.2002, p.21.

(7) Section 64 of the Act of 1983 does not apply to a postal service which is not part of the universal service.

### **Postal Services Authorisations**

*Regulation 7 of SI 616 of 2002 states:*

7.(1) From 1 January 2004, a postal service provider (other than a universal service provider) with an annual turnover of more than €500,000, exclusive of VAT, shall apply to the Regulator for an authorisation (“postal service authorisation”) to provide a postal service.

(2) Where the Regulator is satisfied that an applicant under paragraph (1) can provide a postal service, the Regulator shall grant the applicant a postal service authorisation where the applicant gives the Regulator a written declaration that the postal services provided by the applicant do not infringe the reserved area.

(3) The holder of a postal service authorisation shall draw up procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided by the holder.

(4) The Regulator may withdraw a postal service authorisation where it considers the holder has failed to comply with this Regulation or the written declaration under paragraph (2).

(5) Whenever the Regulator proposes to refuse to grant or withdraw a postal service authorisation, the Regulator shall notify in writing the applicant or holder, as the case may be, of the proposal, and of the reasons therefor, and shall, if any representations are made by or on behalf of the applicant or holder, as the case may be, within 28 days after the date of such notice, consider the representations.

(6) Whenever the Regulator, having considered the representations (if any) that may have been made by or on behalf of the applicant or holder under paragraph (5), decides to refuse to grant or withdraw, as the case may be, the postal service authorisation, the Regulator shall notify in writing the applicant or holder, as the case may be, and the applicant or holder, may, within 28 days after the date of such notice, appeal to the High Court against such refusal.

(7) Where the holder of a postal service authorisation makes an appeal under paragraph (6) against a decision of the Regulator to withdraw the authorisation, the decision of the Regulator shall stand suspended until the determination or withdrawal of the appeal.

(8) On the hearing of an appeal under paragraph (6) in relation to the decision of the Regulator to refuse to grant or withdraw a postal service authorisation, the Court may either confirm the decision, allow the appeal or make any other order it considers appropriate. If the appeal is allowed in the case of a refusal to grant a postal service authorisation, the Regulator shall grant the authorisation.

(9) The decision of the High Court on an appeal under paragraph (6) shall be final save that, by leave of that Court, an appeal on a specified question of law shall lie to the Supreme Court.

(10) A postal service provider (other than a universal service provider) with an annual turnover of more than €500,000, exclusive of VAT, who fails to comply with paragraph (1) or who provides a postal service having been refused a postal service authorisation or had a postal service authorisation withdrawn under this Regulation is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(11) An offence under paragraph (10) may be prosecuted by the Regulator.

### **Reserved Area**

*Regulation 8 of SI 616 of 2002 states:*

8.(1) The following services shall be reserved for An Post as a universal service provider, namely -

(a) the clearance, sorting, transport and delivery of items of domestic correspondence, cross-border correspondence and direct mail, whether by accelerated delivery or not, within both of the following weight and price limits -

(i) the weight limit shall be -

(I) from 1 January 2003, 100 grams, and

(II) from 1 January 2006, 50 grams,

(ii) these weight limits do not apply -

(I) from 1 January 2003, if the price is equal to or more than, three times, and

(II) from 1 January 2006, if the price is equal to or more than two and a half times, the public tariff for an item of correspondence in the first weight step of the fastest category,

(b) the free postal service for blind and partially sighted persons operated by An Post from time to time,

(c) until 1 January 2004, outgoing cross-border correspondence within the same weight and price limits referred to in paragraph(a).

(2) Document exchange is not reserved.

(3) The High Court may, on the application of An Post, make an order prohibiting the provision by any person of any service reserved to An Post under

paragraph (1), and may give such other direction or make such other order in relation to the matter as the Court considers appropriate.

### **Complaints and Dispute Resolution**

*Regulation 15 of SI 616 of 2002 states:*

15. (1) A universal service provider and a postal service provider with an annual turnover of €500,000, exclusive of VAT, shall, in accordance with guidelines laid down by the Regulator in consultation with the provider, draw up transparent, simple and inexpensive procedures for dealing with users complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved). These procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement or compensation or both.

(3) Any guidelines laid down or procedures drawn up under Regulation 17 of the Regulations of 2000, which are in force immediately before the making of these Regulations, are deemed to have been laid down or drawn up under this Regulation.

### **Regulator to monitor compliance with Regulations**

*Regulation 17 of SI 616 of 2002 states:*

17. (1) It is a function of the Regulator to monitor compliance with Regulations 4(3) (a), 4(4), 5, 7, (9)1, 10(1), 11, and 12.

(2) The Regulator shall, where appropriate, and after consultation with the Minister, establish controls and specific procedures to ensure that the reserved services are respected.

### **Communications Regulation Act 2002**

Section 12 (1) (c) states that one of the statutory objectives of the Commission in exercising its functions shall be 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 users.

Section 30 (2) states that for the purposes of meeting expenses properly incurred by the Commission in the discharge of its functions in relation to postal services, the Commission may make an order imposing a levy on providers of postal services.

(3) Whenever a levy order is made there shall be paid to the Commission by each provider of postal services ... such amount as shall be appropriate having regard to the terms of the levy order.

(4) A levy order, including a levy order made under the Act of 1996, may be amended or revoked by the Commission.

(5) Any surplus of levy income over the expenses incurred by the Commission in the discharge of its functions relevant to that levy in a particular financial year shall either—

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

...

(11) The Commission shall not impose a levy on providers of—

- (a) electronic communications for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services, or
- (b) postal services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of electronic communications.

(12) The Commission may recover as a simple contract debt in any court of competent jurisdiction from the person by whom it is payable any amount due and owing to it under this section.

(12A) The Commission shall, in relation to a levy order, cause to be published, whether in its annual report and accounts referred to in section 32 or otherwise, an annual overview of its administrative costs and of the total sum of the charges collected under subsection (1).

(13) In this section “levy order” means an order imposing levy under subsection (1) or (2).

## Appendix B – Application Form for a Postal Service Authorisation

### **Application Form for a Postal Service Authorisation**

(Please complete the following details in **CAPITAL LETTERS**).

*The information provided will be used to update ComReg’s list of Authorised Postal Service Providers.*

#### Section 1 – Details of Applicant

<b>1.1 Name of applicant</b> <b>Mandatory Field</b>	
<b>1.2 Trading Name(s) if different to 1.1</b>	
<b>1.3 Postal Address</b> <b>Mandatory Field</b>	
<b>1.4 Telephone Number</b> <b>Mandatory Field</b>	
<b>1.5 Web site address</b>	
<b>1.6 Registered Address</b> <b>Mandatory Field (for registered companies)</b>	
<b>1.7 Company Registration No.</b> <b>Mandatory Field (for registered companies)</b>	
<b>1.8 Related or connected companies also providing postal services.</b>	

## Section 2 – Details of Cross Border Services Provided

Please indicate in the following table what services you provide/intend to provide within each category listed, ✓ as appropriate.

### Admissible Content – Cross-Border Services

Services within the scope of the Universal Service	Items of correspondence	Direct Mail	Advertising Mail	Books	Newspapers	Catalogues	Periodicals	Postal packages containing merchandise with or without commercial value
Postal Items weighing up to 100g								
Postal Items weighing from 100g up to 2kg								
Postal items weighing from 2kg up to 20kg								
Postal Items which require proof of handing in								
Items which require proof of delivery								
Insured items								
Day Certain Delivery without premium price								
Time Certain Delivery without premium price								
Other added value features (please specify below)								
Services outside the scope of the Universal Service								
Valued Added Services with premium pricing (eg Express/ Courier services)								
New services quite distinct from conventional services?								
-unaddressed mail								
-document exchange								
-other, please specify below								

	National (all areas)	Dublin City only	Local Areas - specify		
Access points in					
	UK	Other EU	USA/Canada	Rest of World	Specific country only - specify
For Delivery in					

(a) other services falling within the scope of the universal service:

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(b) other services falling outside the scope of the universal service :

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(c ) Services not provided to/from particular locations:

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### Section 3 – Details of Services provided within the State.

Please indicate in the following table what services you provide/intend to provide within each category listed, ✓ as appropriate.

#### Admissible Content – Services within the State

Services within the scope of the Universal Service	Items of correspondence	Direct Mail	Advertising Mail	Books	Newspapers	Catalogues	Periodicals	Postal packages containing merchandise with or without commercial value
Postal Items weighing up to 100g								
Postal Items weighing from 100g up to 2kg								
Postal items weighing from 2kg up to 20kg								
Postal Items which require proof of handing in								
Items which require proof of delivery								
Insured items								
Day Certain Delivery without premium price								
Time Certain Delivery without premium price								
Other added value features (please specify below)								
Services outside the scope of the Universal Service								
Valued Added Services with premium pricing (eg Express/ Courier services)								
New services quite distinct from conventional services?								
-unaddressed mail								
-document exchange								
-other, please specify below			32					ComReg 03/117

	National (all areas)	Dublin City only	Local Areas - specify		
Access points in					
	UK	Other EU	USA/Canada	Rest of World	Specific country only - specify
For Delivery in					

(a) other services falling within the scope of the universal service:

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(b) other services falling outside the scope of the universal service :

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(c ) Services not provided to/from particular locations:

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### Section 4 – Complaints & Redress Contact Details (for publication on ComReg Register of Authorised Postal Service Providers)

<b>4.1 Trading Name</b>	
<b>4.2 Postal Address</b>	
<b>4.3 Telephone Number (LoCall or Freefone)</b>	
<b>4.4 Fax Number</b>	
<b>4.5 Email address</b>	

### Section 5 - Contact Details of Compliance Officers

<b>5.1 Primary Compliance Officer</b>	
<b>5.2 Telephone No.</b>	
<b>5.3 Fax No.</b>	
<b>5.4 Mobile No</b>	
<b>5.5 Email Address</b>	
<b>5.6 Deputy Compliance Officer</b>	
<b>5.7 Telephone No.</b>	
<b>5.8 Fax No.</b>	
<b>5.9 Mobile No.</b>	
<b>5.10 Email Address</b>	

## Checklist to ensure that relevant forms are completed.

Please tick ✓ in boxes below and sign before submitting to ComReg.

### Have you completed?

- Application Form for a Postal Service Authorisation together with a signed Checklist

### Also please attach the following signed forms:

- Declaration that services provided/to be provided do not/will not impinge on the area reserved to An Post

### The following documents may also be enclosed now or be submitted subsequently:

- Procedures drawn up as required by Regulation 7(3) to ensure compliance with the essential requirements.
- Complaints and Redress Procedures drawn up in compliance with Regulation 15(1)

On behalf of the Applicant I hereby declare that:

- The information provided by me is accurate and complete in all respects
- I have noted the relevant guidelines and legislation pertaining to this application and
- I shall at all times comply with the lawful directions of the Commission for Communications Regulations.
- For the purposes of the Data Protection Act 1988 (as modified or amended) I hereby consent /do not consent (delete as appropriate) to the publication on ComReg's public register of any personal data provided by me in Section 1 of this application form.

Signed: \_\_\_\_\_ (name & position within company)

On behalf of: \_\_\_\_\_ (company)

Date: \_\_\_\_\_

## Guidance on completion of specific elements of the application form for authorisation

### Section 1 – Details of Applicant

<p><b>1.1 Name of Applicant</b> <b>Mandatory Field</b></p>	<p>This should be the name of the company, if incorporated, or the natural person. Trading names should not be used. i.e. Mr. A O’Brien or A O’Brien Ltd. are acceptable entries; O’Brien Services is not.</p> <p>Sample entry:  A O’Brien Ltd.</p>
<p><b>1.2 Trading Name(s) if different to 1.1</b></p>	<p>Enter the trading name or names as used by the enterprise. Note that where ComReg enters details of a trading name, this is without prejudice to whether the requirements of the Companies Acts relating to Business Names have been complied with.</p> <p>Sample entry:  O’Brien Services</p>
<p><b>1.3 Postal Address</b> <b>Mandatory Field</b></p>	<p>Enter the address to which members of the public should direct correspondence.</p> <p>Sample Entry:  Unit 4, ABC Business Park, Sligo.</p>
<p><b>1.4 Telephone Number</b> <b>Mandatory Field</b></p>	<p>This should be the number for use by members of the public or other third parties – if LoCall or Freefone numbers are available, they should be shown.</p> <p>Sample Entry:  (071) 911 2345</p> <p>Note: ComReg will not make telephone numbers of private individuals available to the public.</p>
<p><b>1.5 Web site address</b></p>	<p>This will provide a link to website of the applicant from the ComReg website</p>
<p><b>1.6 Registered Address</b></p>	<p>The registered address should always be shown in the case of a company. This address will be</p>

<b>Mandatory Field (for registered companies)</b>	used by ComReg for the delivery of statutory notices.
<b>1.7 Company Registration Number</b>  <b>Mandatory Field (for registered companies)</b>	Where the company is not registered at the Irish Companies Registration Office, the number and the company registry should be shown e.g. 123456 (Companies House, London)
<b>1.8 Related or connected companies also providing postal services.</b>	Enter names of companies which also provide postal services and state nature of connection.

Using the sample entry above, the information available on the ComReg website will be shown as follows:

<b>1.1 Company Name</b>	A O’Brien Ltd.
<b>1.2 Trading Names</b>	O’Brien Services
<b>1.3 Postal Address</b>	Unit 4, ABC Business Park, Sligo
<b>1.4 Website</b>	
<b>1.5 Company Telephone</b>	+353 (0)71 911 2345

As can be seen only the details of 1.1 to 1.5 will be displayed on the public register

## Section 2 – Details of Services Provided

The table is a matrix with the different types of content across the top and the different kinds of services down the side. For each type of service provided the relevant column(s) should be ticked according to what contents are accepted. If different services are provided for cross border mail and mail within the state both copies of this table should be provided.

### Definitions from the EU Postal Directives

*postal services*: services involving the clearance, sorting, transport and delivery of postal items;

**NB** Although the above definition taken in conjunction with the definition of postal item appears to restrict postal services to those provided by “the universal service provider” it is clear from both the recitals and specific provisions in the Directives that it encompasses all such services, including Express Services, Document Exchange and Unaddressed Mail:

Recital 21 to 97/67/EC, Whereas new services (services quite distinct from conventional services) and document exchange do not form part of

the universal service and consequently there is no justification for their being reserved to the universal service providers;

Recital 22 to 97/67/EC, Whereas Member States should be able to regulate, by appropriate authorization procedures, on their territory, the provision of postal services which are not reserved to the universal service providers; whereas those procedures must be transparent, non-discriminatory, proportionate and based on objective criteria;

Extract from Article 19, as amended,

Member States may provide that this principle is also applied to beneficiaries of services which are:

- outside the scope of the universal service as defined in Article 3, and
- within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.

Recital 13 to 2002/39/EC, Amongst the factors which bring about change affecting employment in the postal sector, technological development and market pressure for efficiency gains are the most important; of the remaining factors for change, market-opening will play a less prominent part. Market opening will help to expand the overall size of the postal markets, and any reductions in staff levels among the universal service providers due to such measures (or their anticipation) are likely to be offset by the resulting growth in employment among private operators and new market entrants.

*postal item*: an item addressed in the final form in which it is to be carried by the universal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value;

*item of correspondence*: a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence;

*direct mail*: a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number as well as other modifications which do not alter the nature of the message, which is sent to a significant number of addressees, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. The national regulatory authority shall interpret the term 'significant number of addressees' within each Member State and shall publish an appropriate definition. Bills, invoices, financial statements and other non-identical messages shall not be regarded as direct mail. A communication combining direct mail with other items within the same wrapping shall not be regarded as direct mail. Direct mail shall include cross-border as well as domestic direct mail;

*registered item*: a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item and/or of its delivery to the addressee;

*insured item*: a service insuring the postal item up to the value declared by the sender in the event of loss, theft or damage;

*cross-border mail*: mail from or to another Member State or from or to a third country;

*document exchange*: provision of means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service;

*universal service provider*: the public or private entity providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;



Appendix C – Declaration under Regulation 7(2) of the  
European Communities (Postal Services) Regulations, 2002,  
S.I. 616 of 2002

**Declaration under Regulation 7(2) of the  
European Communities (Postal Services)  
Regulations, 2002, S.I. 616 of 2002**

(Please complete the following details in CAPITAL LETTERS).

I, \_\_\_\_\_,  
(name)

\_\_\_\_\_,  
(position within company)

hereby declare that the services provided/to be provided by

\_\_\_\_\_,  
(company name)

do not and will not infringe on the area reserved to An Post as designated Universal  
Service Provider.

Signed \_\_\_\_\_

Duly authorised on behalf of \_\_\_\_\_  
(company name)

Date \_\_\_\_\_

***Please note: Under Regulation 7 (4) of the Regulations ComReg may withdraw a  
postal service authorisation where it considers the holder has failed to comply with  
the written declaration.***

## Appendix D – Postal Service Authorisation

### Postal Service Authorisation

This is to certify that \_\_\_\_\_  
(company name)

Registered Address of Company \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company Registration Number \_\_\_\_\_

is authorised to provide postal services under Section 7 of the European Communities (Postal Services) Regulations, 2002, SI 616 of 2002 ('the Regulations') subject to and in accordance with the Regulations. (see explanatory notes overleaf)

Signed \_\_\_\_\_  
(Chairperson, the Commission for Communications Regulation  
(‘ComReg’) / a person duly authorised by ComReg.

Date \_\_\_\_\_



*ComReg Seal*

## **Explanatory Notes**

Under Regulation 7(3) of the European Communities (Postal Services) Regulations, 2002, S.I. 616 of 2002 the holder of a Postal Service Authorisation *shall* draw up procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided/to be provided and to provide a copy of these procedures to ComReg in the manner and according to timescales specified by ComReg.

An Authorised Postal Service holder is liable to have its Authorisation withdrawn by ComReg where ComReg considers the holder has failed to comply with its obligations under Regulation 7 of the European Communities (Postal Services) Regulations, 2002, S.I. 616 of 2002.

Under Regulation 15 of the European Communities (Postal Services) Regulations, 2002, S.I. 616 of 2002 the holder of a Postal Service Authorisation *shall* draw up and submit to ComReg for approval, a formal Code of Practice for dealing with Customer Complaints and Redress with provision for a system of reimbursement or compensation or both in line with the Guidelines issued by ComReg in its Response to Consultation, ‘Postal Services – Universal Service Obligation, Tariff Principles and miscellaneous issues’, Document No. 03/50, which was published on 13 May 2003.

## Appendix E – Sample Of Eurostat Information Request

TABLE 1: GENERAL INFORMATION	
EMPLOYMENT	
Total number of persons employed	
Number of full-time employees	
Number of part-time employees	
Number of employees in full-time equivalent units	
Total number of persons employed for the provision of postal and related services	

TABLE 3: FINANCIAL RESULTS	
Total turnover of company	
Total turnover from the provision of postal and related services	
Payments received from foreign operators / partners	
Operating expenditures for the provision of postal and related services	
Payments paid to foreign operators	
Investments for postal and related services	

TABLE 4: BREAKDOWN OF TURNOVER FROM POSTAL AND RELATED SERVICES	
POSTAL AND RELATED SERVICES, TOTAL	
Standard letter-post services, total	
CEP services, total	
Courier services	
Express and parcels services	
Express services	
Parcels services	
Other postal and related services	
BREAKDOWN OF STANDARD LETTER-POST SERVICES	
Letters and postcards	
Direct mail	
Other letter-post items	

TABLE 5: BREAKDOWN OF TRAFFIC (number of items dispatched)	
POSTAL AND RELATED SERVICES, TOTAL	
Standard letter-post services, total	
CEP services, total	

Courier services	
Express and parcels services	
Express services	
Parcels services	
Other postal and related services	
BREAKDOWN OF STANDARD LETTER-POST SERVICES	
Letters and postcards	
Direct mail	
Other letter-post items	
INTERNATIONAL POSTAL AND RELATED SERVICES	
Total number of outgoing postal items dispatched	
Total number of incoming postal items dispatched	

## Appendix F - Consultation Questions

### List of Questions

- Q. 1. Do you agree that the proposed arrangements for issuing Postal Service Authorisations are appropriate and achieve the objectives of the legislation? If not, please state your reasons. .... 13
- Q. 2. (i) Do you agree that 6 months is a reasonable time to allow Authorised Postal Service Providers to submit procedures required under Regulation 7 (3) and a code of practice for dealing with customer complaints and redress as required by Regulation 15 (1)? If you disagree, please state what period you think is appropriate, with your reasons..... 13
- Q. 3. Do you agree that the proposed arrangements for ensuring that the services reserved to An Post are respected will give certainty to both users and service providers while meeting their objectives? If not, please state your reasons..... 15
- Q. 4. Do you agree with the structure for the collection of the levy as outlined above, or should everyone pay the levy at the same rate (0.25%) irrespective of the different regulatory obligations? If you provide postal services other than as a designated universal service provider would you prefer a flat rate levy to the proposed levy based on a percentage of turnover, or is there any other basis for sharing out the cost of regulation? Please state your reasons, and submit in confidence an estimate of your relevant turnover so that ComReg’s response to this consultation can be based on the best available estimates..... 19
- Q. 5. Do you agree that Postal Service Providers who do not hold a postal service authorisation, and are not required under Regulation 7(1) to hold one, should be exempt from paying the levy? If not, please state your reasons and suggest how such operators should be identified. .... 19
- Q. 6. Do you agree with the proposed arrangements for determining the turnover on which the levy should be based? If not, please state your reasons.  
20
- Q. 7. Do you agree that Postal Service Providers who hold a postal service authorisation should supply additional information to enable ComReg to monitor the evolution of the postal sector? If not, please state your reasons..... 20
- Q. 8. Are there alternative ways of implementing the requirement to introduce Postal Service Authorisations, and to put in place procedures to ensure that An Post’s reserved area is respected, and would they have a greater or lesser impact on your company?..... 22
- Q. 9. What is your assessment of the impact of these measures as a whole on your company?..... 22