



Commission for  
**Communications Regulation**

# **Response to Consultation and Decision on An Post application for derogations from the universal postal service in respect of certain working days**

**Response to Consultation and Decision**

**Reference:** ComReg 14/135 and D14/14

**Date:** 15/12/2014

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## Additional Information

Consultation Document 14/94	8 September 2014
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## Responses received to Consultation 14/94

1	An Post
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# 1 Executive Summary

1. Section 16(1)(a) of the Communications Regulation (Postal Services) Act 2011 (“2011 Act”) sets the scope of the “universal postal service” as meaning that on every working day there is at least one clearance and one delivery to the home or premises of every person in the State, *except in such circumstances or geographical conditions as ComReg considers to be exceptional*.
2. In September 2014 the Commission for Communications Regulation (“ComReg”) consulted in Document 14/94<sup>1</sup> (“Consultation 14/94”) on An Post’s application (Document 14/94a<sup>2</sup>) for derogations from the universal postal service in respect of the following working days:
  1. Good Friday,
  2. Mondays following a public holiday which falls on a Saturday or Sunday,
  3. 24 December (Christmas Eve) (derogation for collections only<sup>3</sup>), and
  4. First working day after 26 December (St. Stephen’s Day).
3. The provision of the universal postal service by An Post within the State is commonly known as the “universal service obligation” and is referred to throughout this Response to Consultation document as the “USO”. The term “derogation” is used throughout this document to describe the removal of a working day from the USO. An Post sought a derogation from its full USO<sup>4</sup> for each of the specified working days which would mean in particular that An Post would not be required to collect or deliver mail on those days. The one exception is 24 December, for which An Post proposed to provide a full postal delivery service but sought a derogation for postal collections service only. The An Post application stated that services have not been provided on these days previously (with the exception of collections on 24 December (Christmas Eve)).
4. In Consultation 14/94, ComReg considered and set out its preliminary views on An Post’s application for each of the working days for which it sought a derogation from the USO, taking account of the information provided by An Post and having regard to the technical, economic and social environment and the needs of postal service users.

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<sup>1</sup> <http://www.comreg.ie/fileupload/publications/ComReg1494.pdf>

<sup>2</sup> <http://www.comreg.ie/fileupload/publications/ComReg1494a.pdf>

<sup>3</sup> There will be a full delivery service on 24 December as at present

<sup>4</sup> See section 2 for details of the full universal postal service

5. ComReg received just one response to Consultation 14/94<sup>5</sup> - from An Post. Having considered An Post's response, this Response to Consultation document sets out ComReg's decision on An Post's application for derogations which are as follows and which will apply from 1 January 2015:

### **Derogation from USO for Good Friday**

6. ComReg has decided to grant a part derogation for Good Friday. An Post must provide a collections and/or deliveries service to the access points and delivery points it is currently servicing on this date, the details of which An Post will provide to postal service users on its website, in a format requested by ComReg.

### **Derogation from USO for Mondays following a public holiday which falls on a Saturday or Sunday**

7. ComReg has decided to grant a full derogation for Mondays following a public holiday which falls on a Saturday or Sunday.

### **Derogation from USO for 24 December (Christmas Eve) (derogation for collections only)**

8. ComReg has decided to grant a derogation for collections only on 24 December (Christmas Eve).

### **Derogation from USO for First working day after 26 December (St. Stephen's Day)**

9. ComReg has decided to grant a full derogation for the first working day after 26 December (St. Stephen's Day). This derogation is conditional on An Post providing a collections service for the public access points which it must identify annually to ComReg that it considers may have security and confidentiality of mail risks due to volume capacity overflow issues if not cleared over the extended Christmas period. An Post will advise ComReg annually of these particular access points and it will put in place arrangements to ensure the risk is mitigated.

### **An Post's Communications Plan**

10. In light of the derogations granted, An Post will implement its communications plan in a manner consistent with that prescribed by ComReg in its decision.

### **Regulatory Impact Assessment (RIA)**

11. Having considered the views of the respondent, ComReg has finalised its Regulatory Impact Assessment ('RIA') in this Response to Consultation. The RIA addresses the available options in relation to the decision to grant the derogations from the USO which An Post, as the designated USP, has applied for.

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<sup>5</sup> An Post's response is published in 14/135s

**Notification of exceptions granted**

12. Section 16(8) of the 2011 Act requires that ComReg “*shall notify in writing any exception granted for the purposes of subsection (1)(a) or determination made for the purposes of subsection (1)(a)(ii) to—*

*(a) the Minister,*

*(b) the European Commission, and*

*(c) the national regulatory authorities in all Member States,*

*and shall publish any such exception granted or determination made.”*

13. In addition to publishing this Response to Consultation and Decision document, ComReg also shall notify the above authorities of the exceptions which have been granted under section 16 (1)(a) of the 2011 Act, in accordance with section 16(8) of the 2011 Act.

## 2 Background

14. While mail volumes are in decline worldwide<sup>6</sup>, the postal service still nevertheless remains an important means of communication for Irish postal service users, both residential and business, and it is particularly important for Small and Medium Enterprises (“SMEs”). Further, the required scope of the USO is specified by law in the Postal Directive<sup>7</sup> (“the Directive”) and in the 2011 Act.
15. Section 17 of the 2011 Act designates An Post as the sole universal service provider (“USP”) for the first 12 years of the 2011 Act (i.e., from 2 August 2011 – 1 August 2023) with the designation subject to review by ComReg after 7 years. An Post, as USP, is required to provide a universal postal service of a certain minimum standard.
16. Section 16(1)(a) of the 2011 Act provides that the “universal postal service” means that on every working day, except in such circumstances or geographical conditions as ComReg considers to be exceptional, there is at least one clearance and one delivery to the home or premises of every person in the State.
17. Section 16(1)(b) of the 2011 Act further sets out certain specific services that shall be provided and Section 16(9) of the 2011 Act requires ComReg to make regulations specifying the services to be provided by a USP for the purposes of ensuring that the universal postal service develops in response to the technical, economic and social environment and to the reasonable needs of users. ComReg made such regulations in July 2012, following public consultation.<sup>8</sup>
18. In accordance with the 2011 Act and S.I. 280/2012, An Post’s current USO includes the following minimum services:
- A single piece service involving the clearance, sorting, transport and distribution of letters, large envelopes, packets and parcels.
  - A registered items (“proof of delivery”) service.
  - An insured items service.
  - A single piece service provided free of charge to the postal service user for the transmission of postal packets for the blind or partially sighted.
  - Issuing free certificates of posting.

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<sup>6</sup> Universal Postal Union 2012 Statistics: <http://news.upu.int/insight/backgrounders/key-figures/>

<sup>7</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 as amended by Directive No. 2002/39/EC of 10 June, 2002, and Directive No. 2008/6/EC of 20 February, 2008, of the European Parliament and of the Council

<sup>8</sup> Communications Regulation (Universal Postal Service) Regulations 2012 (S.I. 280/2012)



- A service for the clearance, transport and distribution of:
  - postal packets deposited in bulk “for delivery only”;
  - “postal packets deposited in bulk” for “deferred delivery”; and
  - “foreign postal packets deposited in bulk” pre-sorted by country of destination.
- A service for the clearance, transport and distribution of postal packets deposited with a USP at an Office of Exchange within the State by the designated operator of a signatory to the Universal Postal Convention.
- The following services are also included: redirection service, mailminder service, business reply and freepost service, private boxes and bags, poste restante.

19. Under Section 16(1)(a) of the 2011 Act, An Post must provide the universal postal service on every “working day” which term is defined in the Interpretation Act 2005 as “a day which is not a Saturday, Sunday or public holiday.” In addition, the Second Schedule to the Organisation of Working Time Act 1997<sup>9</sup> (“OWT Act”) sets out the following nine dates as being the official annual “public holidays” in the State:

- New Year's Day (1 January)
- St. Patrick's Day (17 March)
- Easter Monday
- First Monday in May, First Monday in June and First Monday in August
- Last Monday in October
- Christmas Day (25 December)
- St. Stephen's Day (26 December)

20. An Post made an application to ComReg for derogations from the USO under Section 16(1)(a) of the 2011 Act in respect of certain working days which ComReg has consulted on in Consultation 14/94.

21. In general, the reasons put forward by An Post in support of its application for derogations for each of these working days and as set out in Consultation 14/94 can be summarised as follows;

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<sup>9</sup> An Act to provide for the implementation of directive 93/104/EC of 23 November 1993 of the Council of the European Communities concerning certain aspects of the organization of working time, to make provision otherwise in relation to the conditions of employment of employees and the protection of the health and safety of employees, to amend certain enactments relating to employees, to repeal the conditions of employment acts, 1936 and 1944, the holidays (employees) acts, 1973 and 1991, and certain other enactments and to provide for related matters.

<http://www.irishstatutebook.ie/1997/en/act/pub/0020/>

- that there is low demand for universal postal services on these days and in any event postal service users have alternative methods of communications which they are using,
- that many businesses are closed or inaccessible<sup>10</sup> on these days,
- that services have not been provided on these days previously (with the exception of collections on 24 December (Christmas Eve)), and
- that there would be a significant cost for An Post to provide a collection and delivery service on these days.

22. ComReg noted in Consultation 14/94 that it has never received any complaints regarding the current level of service provision on these working days. ComReg also notes that it has received just one response (from the USP, An Post) to Consultation 14/94.

23. ComReg, in making its decisions in this Response to Consultation with regard to removing these specific working days from the USO, in whole or in part, has had regard to its overall statutory remit which requires it to take proportionate measures in order to ensure the provision of an affordable universal postal service that meets the reasonable needs of all postal service users, throughout the State.

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<sup>10</sup> An Post has not provided an explanation for 'inaccessible'. However, ComReg assumes that this is where the premises are locked up to the extent that normal access to the premises, and as such to the access/delivery point, is not available to An Post delivery staff. ComReg would assume that this would be applicable to a small number of the overall c. 2 million delivery points.

## 3 Response to Consultation: An Post's application for derogations

24. This chapter sets out ComReg's assessment and decisions in respect of each working day for which An Post seeks a derogation from the USO.

25. In Consultation 14/94, ComReg considered each of the working days in question separately, taking account of the information provided by An Post in support of its application and taking into account the needs of postal service users and the technical, economic and social environments. ComReg has now also considered An Post's response to Consultation 14/94.

### 3.1 Derogation from USO for Good Friday

26. Consultation 14/94 set out the reasons provided by An Post in its application seeking a derogation for Good Friday. An Post sought a full derogation from its USO, in particular for collections and deliveries of mail, although it stated even if the full derogation was granted it would continue to maintain the current limited service provision on Good Friday, at its own discretion as detailed in its application (Document 14/94a).

27. An Post stated that it currently provides a collections service on Good Friday equating to c. 20% of its normal collection routes, as serviced on every other working day and a full delivery service on c. 46% of its normal delivery routes as serviced on every other working day<sup>11</sup>, while a further 4% or so of its delivery routes are part covered<sup>12</sup>.

28. Consultation 14/94 set out ComReg's preliminary considerations of An Post's application for derogation from the USO for Good Friday. In Consultation 14/94, ComReg considered the following three options with regard to the provision of postal services on Good Friday:

- i. grant no derogation for Good Friday – this would require An Post to provide a full universal postal service on Good Friday (in particular collections and deliveries, at all locations);
- ii. grant a full derogation for Good Friday – An Post would no longer have any obligation to collect or deliver any mail on Good Friday (though it may choose to collect and/or deliver some mail, entirely at its discretion); or

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<sup>11</sup> Though An Post has confirmed that 40% of mail is posted on a Good Friday, ComReg assumes it has the 100% posting from the previous day on hands and available to deliver on Good Friday.

<sup>12</sup> "Part covered" means that not all of the delivery points on the delivery route are serviced.

- iii. grant a part derogation for Good Friday - ComReg would specify the access points and delivery points, from which An Post would be required to collect and/or deliver mail on Good Friday<sup>13</sup>.

29. Having considered these three options, and for the reasons set out in Consultation 14/94, ComReg was minded to adopt Option (iii) and grant a part derogation for Good Friday, whereby An Post would be required to provide a limited efficient service on this date fixed by reference to the scope and level of service which An Post currently provides, as set out in its application.

30. ComReg sought the views of interested parties in relation to ComReg's preliminary assessment by asking the following question:

***Q1. Do you agree with ComReg's preferred option as set out above? Please provide reasons with your answer and any supporting information in your possession, in particular with regard to the level of postal service user demand for services on Good Friday and the level of businesses open/closed on Good Friday.***

### Views of respondent

31. Although An Post welcomed the partial derogation which ComReg had proposed in Consultation 14/94, it stated that its preference is to be granted a full derogation for Good Friday as it claims that Good Friday remains a "shut down day" for the main senders of mail, including financial institutions, utilities and government. In support of its position An Post also restated its belief that "the majority of the general public view Good Friday as a de-facto public holiday and do not have the expectation that it is a day on which normal infrastructural services are provided".

### ComReg's position

32. ComReg's maintains the view that there is some demand for provision of postal services on Good Friday as demonstrated by An Post's provision in the past and its enduring commitment to maintain its current level of service on that day even if granted a full derogation. The proposed option (iii) maintains the 'status quo' and would ensure that, in the circumstances, a sufficient level of service would be provided on Good Friday so as to satisfy user demand but without imposing any additional costs on An Post. Thus these services will continue to be provided as part of the USO to the benefit of postal service users.

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<sup>13</sup> An Post would specifically structure its postal network to efficiently collect/deliver mail to the specified access/delivery points which are accessible for service on the day

33. Therefore, having considered the views of the respondent, ComReg's decision is to grant a part derogation which will require An Post to provide a collections service and deliveries service on Good Friday for the access and delivery points/areas which it will list on its website.

34. For all other areas, there will be no USO services for Good Friday, in particular collections and deliveries, and the following USO arrangements will apply;

- Postal packets posted before latest time of posting ("LTOP") on the Thursday before Good Friday will be delivered on the following Tuesday.
- Postal packets posted after LTOP on the Thursday before Good Friday or on Good Friday itself will be collected on the following Tuesday for delivery on Wednesday (i.e. one working day later than normal, Easter Monday being a public holiday).

**Table 1: Derogation for Good Friday**

Thursday prior to Good Friday	Good Friday	Saturday	Sunday	Easter Monday	Tuesday	Wednesday
Normal collection and delivery service	Derogation day – Limited USO services for collection and delivery areas which An Post will publish on its website	Weekend – no service	Weekend – no service	Public holiday- no service	Normal collection and delivery service resumes ----- Mail posted before the LTOP on the Thursday prior to Good Friday will be delivered on this day	Normal collection and delivery service ----- Mail posted after the LTOP on the Thursday prior to Good Friday or on Good Friday will be delivered on this day

35. An Post will publicise this information within twelve weeks following the date of this Response to Consultation/Decision and in the format requested by ComReg. An Post will provide to ComReg within four weeks of publication of this Response to Consultation/Decision the details of all the access points and delivery points which it currently services, and the details of the points which it currently does not service on Good Friday. Within eight weeks of the publishing of this Response to Consultation/Decision ComReg will advise of the format and the level of details that An Post will be required to advise postal service users with regard to the access points and delivery points it will service on this day thereafter. Any further changes to these access/delivery point servicing by An Post will require the prior approval of ComReg.

### **3.2 Derogation for any Monday following a public holiday which falls on a Saturday or Sunday**

36. Consultation 14/94 set out the reasons provided by An Post in its application seeking a full derogation from the USO (in particular for collections and deliveries) for any Monday following a public holiday which falls on a Saturday or Sunday. This applies for any of the following public holidays<sup>14</sup> when they fall on a Saturday or Sunday:

- 17 March (St. Patrick's Day),
- 25 December (Christmas Day),
- 26 December (St. Stephen's Day), and
- 1 January (New Year's Day).

37. The OWT Act does not categorise the next working day where a public holiday falls on a Saturday or Sunday as a "public holiday" nor is the next working day automatically substituted as a public holiday.

38. An Post stated in its application that it has never provided a universal postal service on a Monday following a public holiday, which fell on a Saturday or Sunday, and it sought a full derogation from the USO for such Mondays.

39. The derogation which An Post has sought for Mondays which follow 25 December, 26 December and 1 January (Christmas Day, St. Stephen's Day or New Year's Day) where any of those days fall on a weekend, were also considered in conjunction with An Post's requests for a derogation for;

- collections on 24 December (Christmas Eve) (see section 3.3), and
- the first working day after 26 December (St. Stephen's Day) (see section 3.4).<sup>15</sup>

40. Consultation 14/94 set out ComReg's preliminary considerations of An Post's application for derogation from the USO for Mondays following a public holiday which falls on a Saturday or Sunday. In Consultation 14/94, ComReg considered the following two options:

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<sup>14</sup> The full listing of the national public holidays under the OWT Act is provided in section 2 above.

<sup>15</sup> Please see Annex 2 of this document.

- i. do not grant a derogation – this would require An Post to provide a full USO on such days (in particular collections and deliveries, at all locations);
- ii. grant a full derogation – An Post would no longer have an obligation to provide the USO and in particular to collect or deliver any mail on such days.

41. Having considered these two options, and for the reasons set out in Consultation 14/94, ComReg was minded to adopt Option ii.

42. In Consultation 14/94, ComReg sought the views of interested parties on its preliminary assessment by asking the following question:

***Q.2 Do you agree with ComReg's preferred option as set out above?  
Please provide reasons with your answer and any supporting information in your possession, in particular with regard to the level of postal service user demand for services and the level of businesses open/closed on the Mondays following a public holiday which falls on a Saturday or Sunday.***

### **Views of respondent**

43. In its response to Consultation 14/94 An Post reaffirmed its provisionally stated view that postal service users do not expect a postal service and that postal services are not provided currently on Mondays following a public holiday which falls on a Saturday or Sunday. An Post welcomed the full derogation which ComReg had proposed in Consultation 14/94.

44. Regarding ComReg's observations in Consultation 14/94 on the non-retail sector, which ComReg noted may be open on these Mondays, in its response An Post's contends that the absence of the postal service on these rare Mondays should not constitute a major inconvenience for these postal service users as, according to An Post, these businesses, particularly international financial services companies, are not heavy users of the postal service and in any event frequently use electronic substitutes for communication.

### **ComReg's position**

45. Having considered the views of the respondent, ComReg's decision is to grant a full derogation from the USO, in particular to collect or deliver mail, on Mondays following a public holiday which falls on a Saturday or Sunday.

The following overall USO arrangements will apply on these Mondays:

- postal packets posted before Latest Time of Posting ("LTOP") on the previous Friday will not be delivered until the following Tuesday; and



- postal packets posted after LTOP on the previous Friday, or on Saturday, Sunday or Monday following a public holiday which falls on a Saturday or Sunday, will not be collected until the following Tuesday to be delivered on the Wednesday.

**Table 2: Derogation for Mondays following a public holiday which falls on a Saturday or Sunday**

Friday	Saturday	Sunday	Monday	Tuesday	Wednesday
Normal collection and delivery service	Weekend - no service	Weekend - no service	<b>Derogation day – no service</b>	Normal collection and delivery service resumes ----- Mail posted before the LTOP on the Friday will be delivered on this day	Normal collection and delivery service ----- Mail posted after the LTOP on the Friday, Saturday, Sunday or Monday will be delivered on this day

### 3.3 Derogation from USO for collections on 24 December (Christmas Eve)

46. An Post sought a derogation from its USO for collections on 24 December (Christmas Eve), but not for the remainder of the USO including deliveries on that date. An Post currently provides a full collections and deliveries service on 24 December. Consultation 14/94 set out the reasons provided by An Post in its application for seeking a derogation for collections on 24 December (Christmas Eve) and set out ComReg's preliminary considerations of An Post's application. In Consultation 14/94, ComReg considered the following two options with regard to the provision of postal services on 24 December (Christmas Eve):

- i. do not grant a derogation for collections – this would require An Post to provide a full USO on 24 December (Christmas Eve);
- ii. grant a derogation for collections – An Post would no longer have an obligation to collect mail on 24 December (Christmas Eve) (though it would have an obligation to provide the remainder of the USO and in particular to deliver mail on that date).

47. For the reasons set out in Consultation 14/94, ComReg was minded to adopt Option ii.

48. ComReg sought the views of interested parties in relation to ComReg's preliminary assessment of An Post's application by asking the following question:

***Q.3 Do you agree with ComReg's preferred option as set out above?  
Please provide reasons with your answer and any supporting information in your possession, in particular with regard to the level of postal service user demand for a collections service and the level of businesses open/closed in the afternoon/evening of 24 December (Christmas Eve).***

#### Views of respondent

49. In its response to Consultation 14/94 An Post welcomed ComReg's proposal to grant the derogation for collections on 24 December (Christmas Eve) which it believes will not inconvenience postal service users as it states this mail will be delivered before many businesses on the third working day after 26 December (St. Stephen's Day).

#### ComReg's position

50. Having considered the views of the respondent, ComReg's decision is to grant a full derogation for collections from the USO on 24 December (Christmas Eve).

51. Therefore the following service arrangements will apply;

- postal packets posted on the 23 December before the displayed Latest Time of Posting (“LTOP”) will be collected on the 23 December and due for delivery on 24 December (Christmas Eve) (where these dates fall on a working day).
- postal packets posted after the LTOP on 23 December and on 24 December (Christmas Eve) will not be collected until the second working day following 26 December (St. Stephen’s Day) as a derogation is also being granted by ComReg for the first working day after 26 December (St. Stephen’s Day) (see section 3.4 below). These postal packets will then be due for delivery on the third working day after 26 December (St. Stephen’s Day).

**Table 3: Derogation for collections on 24 December (Christmas Eve)**

23 December	24 December (Christmas Eve)	25 December (Christmas Day)	26 December (St. Stephen’s Day)	First working Day after 26 December (St. Stephen’s Day)	Second working day after 26 December (St. Stephen’s Day)	Third working day after 26 December (St. Stephen’s Day)
Normal collection and delivery service	<b>Derogation day – No collection service</b>  Delivery service only	Public holiday –  no service	Public holiday –  no service	<b>Derogation day – no service</b>	Normal collection and delivery service resumes  ----- Mail posted after the LTOP on 23 December or on Christmas Eve will be collected on this day	Normal collection and delivery service  ----- Mail posted after the LTOP on 23 December or on Christmas Eve will be due for delivery on this day

### 3.4 Derogation from USO for the first working day following 26 December (St. Stephen's Day)

52. An Post stated in its application that it has never provided a universal postal service on the first working day after 26 December (St. Stephen's Day) and sought a full derogation from the USO, in particular for collections and deliveries for that day. Consultation 14/94 set out the reasons provided by An Post in its application for seeking a derogation for the first working day following 26 December (St. Stephen's Day). In Consultation 14/94, this application was considered by ComReg together with An Post's applications for derogations for:

- 24 December (Christmas Eve) (derogation for collections of mail only) (see section 3.3 above), and
- Mondays following a public holiday falling on a Saturday or Sunday (see section 3.2 above), when this applies to 25 December, 26 December, and 1 January (Christmas day, St. Stephen's Day and New Year's Day respectively).<sup>16</sup>

53. Consultation 14/94 set out ComReg's preliminary considerations of An Post's application for derogation from the USO for the first working day after 26 December (St. Stephen's Day). ComReg considered the following two options:

- i. do not grant a derogation for the first working day after St. Stephen's Day – this would require An Post to provide a full USO on this day (in particular collections and deliveries, at all locations);
- ii. grant a full derogation for the first working day after St. Stephen's Day with conditions attached<sup>17</sup> – An Post would no longer have an obligation to provide the USO and in particular to collect or deliver any mail.

54. For the reasons set out in Consultation 14/94, ComReg was minded to adopt Option ii. ComReg asked the following question of respondents;

***Q. 4 Do you agree with ComReg's preferred option as set out above? Please provide reasons with your answer and any supporting information in your possession, in particular with regard to the level of postal service user demand for services and the level of businesses open/closed on the first working day after 26 December (St. Stephen's Day).***

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<sup>16</sup> Please see Annex 2 of this document for how this would apply each year.

<sup>17</sup> This derogation would be conditional on An Post providing a collections service for certain public access points.

## Views of respondent

55. In its response to Consultation 14/94 An Post welcomed ComReg's proposal to grant a full derogation with conditions attached and it confirmed that it will provide a collections service for those public access points which might have volume capacity overflow issues if not cleared over the extended holiday period due to the derogations being granted.

## ComReg's position

56. Having considered the views of the respondent, ComReg's decision is to grant a full derogation for the first working day after 26 December (St. Stephen's Day) conditional on An Post providing a collections service for the public access points which it identifies annually to ComReg that may have volume capacity overflow issues if not cleared over the extended Christmas period. An Post will be required to put in place arrangements to ensure the risk is mitigated by collecting mail from these access points at appropriate intervals and properly securing all such mail<sup>18</sup> until normal service resumes.

57. Therefore the following service arrangements will apply;

- postal packets posted on the 23 December before the displayed Latest Time of Posting ("LTOP") will be collected on 23 December and due for delivery on 24 December (Christmas Eve) (where these dates fall on a working day).
- postal packets posted after the LTOP on 23 December, on 24 December (Christmas Eve) and on the first working day after 26 December (St. Stephen's Day) will not be collected until the second working day following 26 December (St. Stephen's Day). These postal items will then be due for delivery on the third working day after 26 December (St. Stephen's Day).

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<sup>18</sup> An Post has a legal obligation for the security and confidentiality of all mail it handles

**Table 4: Derogation for the first working day after 26 December (St. Stephen's Day)**

<b>23 December</b>	<b>24 December (Christmas Eve)</b>	<b>25 December (Christmas Day)</b>	<b>26 December (St. Stephen's Day)</b>	<b>First working Day after 26 December (St. Stephen's Day)</b>	<b>Second working day after 26 December (St. Stephen's Day)</b>	<b>Third working day after 26 December (St. Stephen's Day)</b>
Normal collection and delivery service	<b>Derogation day – No collection service</b>  Delivery service only	Public holiday –  no service	Public holiday –  no service	<b>Derogation day – no service</b>	Normal collection and delivery service resumes  ----- Mail posted on Christmas Eve and the first working day after 26 December will be collected on this day	Normal collection and delivery service  ----- Mail posted on Christmas Eve and the first working day after 26 December will be due for delivery on this day

## 4 An Post's Communications Plan for Derogation Days

58. Consultation 14/94 assessed An Post's proposed communications plan for the days it requested to be granted derogations from the USO. ComReg was of the preliminary view in Consultation 14/94 that if An Post should be granted any of these derogations, certain additional communications arrangements should be put in place by An Post. ComReg sought views on these proposals by asking the following in Consultation 14/94:

***Q. 5 If an exemption is granted for any day do you consider the proposed customer communication arrangements to be adequate? Please explain your response clearly and provide full details.***

### Views of respondent

59. In its response to Consultation 14/94, An Post stated it *"is fully committed to ensuring that its customer communications are both appropriate and timely in order to ensure that postal service users are fully aware of the arrangements for provision of the USO..."*

### ComReg's position

60. Having considered the views of the respondent, and in light of its decisions to grant a number of derogations from the USO for certain working days as set out in this Response to Consultation, ComReg's decision is that the following details shall be included in the An Post's communications plan:

- The An Post website and Post Office notices will be updated with relevant details which will be prominently displayed and highlighted for an appropriate period in advance of the relevant days,
- An Post's access points notice plates will be updated with new information regarding the level of service (and in the format required by ComReg). Such a programme is to be completed for all access points within 18 months of this decision,
- Full details of the derogations granted will be clearly stated in An Post's terms & conditions (and in any subsequent updated versions),
- For Good Friday - An Post must clearly advise postal service users on its website (and in the format requested by ComReg) of the access/delivery points it would service on Good Friday as part of its USO,
- For the Christmas period – All An Post Christmas posting period notices will include full details of the derogations granted.

- An Post must ensure that its customer communications are adequate and timely so that postal service users are fully aware of the universal service being provided and in particular the arrangements for collection and delivery of mail on the dates for which any such derogation is granted. An Post should provide all relevant details of its level of service to its customers.



## 5 RIA

61. Consultation 14/94 contained ComReg's draft RIA and ComReg sought views on same by asking:

***Q.6 Are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.***

62. ComReg now assesses the response to the draft RIA and provides its position on this, which is reflected in the RIA in Chapter 6.

63. ComReg considers the key views raised by the respondent and provides its corresponding response position below.

### Views of respondent

64. In its response on the draft RIA An Post stated that *"[u]ltimately the cost of providing the USO is reflected in the price charged to customers. The provision of an extensive postal service on days when demand for postal services is very low increases cost and ultimately price without any commensurate benefit to postal users."*

### ComReg's position

65. ComReg believes this point is adequately reflected in the RIA and accordingly no amendments to the draft RIA are required which is now presented in this Response to Consultation as the final RIA in Chapter 6.

## 6 Regulatory Impact Assessment

66. ComReg's published Regulatory Impact Assessment ("RIA") Guidelines<sup>19</sup> (Doc 07/56a), made in accordance with a policy direction to ComReg<sup>20</sup>, state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers.

67. The RIA Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.

68. Having considered the views of respondents, in this RIA, ComReg examines the options open to it in relation to the decisions to grant the following derogations from the USO which An Post, the designated USP, has applied for:

1. Good Friday,
2. Mondays following a public holiday which falls on a Saturday or Sunday,
3. 24 December (Christmas Eve) (derogation for collections only<sup>21</sup>), and
4. First working day after 26 December (St. Stephen's day).

### 6.1 Steps involved

69. As set out in its Guidelines, ComReg's approach to RIA follows five steps, as follows:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the impacts on stakeholders

Step 4: determine the impacts on competition

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<sup>19</sup> Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

<sup>20</sup> Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

<sup>21</sup> There will be a full delivery service on 24 December as at present

Step 5: assess the impacts and choose the best option

## 6.2 Step 1 : Describe the policy issue and identify the objectives

70. Section 16(1) of the 2011 Act defines the scope of the universal postal service to a large extent, setting out that it entails at least one clearance and one delivery to the home or premises of every person in the State on every working day (i.e. Monday - Friday, excluding public holidays) *“except in such circumstances or geographical conditions as the Commission considers to be exceptional”*.

71. As a result of An Post’s application, the policy issue is the decision to be made by ComReg as to whether the circumstances surrounding any or all of the “working days” specified by An Post are so exceptional as to justify the removal of any or all of those days from the USO, with the exception of 24 December (Christmas Eve) for which An Post seeks the removal of collections only from the USO. All other USO services will be provided on that day.

72. In terms of its statutory remit, ComReg must have regard to its relevant functions as set out in section 10 of the Communications Regulation Act 2002 – 2011 - particularly *“to ensure the provision of a universal postal service that meets the reasonable needs of postal service users”* - and to its relevant objectives set out at 12(1), in particular *“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 postal service users”*. Furthermore, ComReg must have regard to section 12(3) which requires that ComReg *“[in] carrying out its functions ... shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.”*

73. When considering any possible derogation from the USO ComReg shall also have regard to the needs of postal service users, the technical environment, the economic environment and the social environment, as required by section 16(6) of the 2011 Act.

## 6.3 Step 2: Identify and describe the regulatory options

74. ComReg’s RIA Guidelines set out that the first option is always to make no change to the current regulatory policy. Other options, which would change the regulatory policy, are then added.

### Policy issue 1: Whether to grant a derogation for Good Friday

75. ComReg has identified three regulatory options:

- **Option 1** – do not grant a derogation for Good Friday – this would require An Post to provide a full USO on Good Friday (including collections and deliveries, at all locations); or
- **Option 2** - grant a full derogation for Good Friday – An Post would no longer have an obligation to provide the USO and in particular to collect or deliver any mail on Good Friday (though it may choose to collect and/or deliver some mail, entirely at its discretion); or
- **Option 3** - grant a part derogation for Good Friday - ComReg would specify the access points and delivery points, from which An Post would be required to collect and/or deliver mail on Good Friday as part of the USO<sup>22</sup>.

## **Policy issue 2: Whether to grant a derogation for Mondays following any public holiday which falls on a Saturday or Sunday**

76. ComReg has identified two regulatory options:

- **Option 1** – do not grant a derogation – this would require An Post to provide a full USO on such days (including collections and deliveries, at all locations); or
- **Option 2** – grant a full derogation – An Post would no longer have any legal obligation to provide the USO and in particular to collect or deliver any mail on such days.

## **Policy issue 3: Whether to grant a derogation for collections only for 24 December (Christmas Eve)**

77. ComReg has identified two regulatory options:

- **Option 1** – do not grant a derogation for collections – this would require An Post to provide a full USO on 24 December (Christmas Eve) as at present;
- **Option 2** – grant a derogation for collections – An Post would no longer have any legal obligation to collect mail on 24 December (Christmas Eve) (though it would have an obligation to provide the remainder of the USO and to deliver mail on that date).

## **Policy issue 4: Whether to grant a derogation for the first working day after 26 December (St. Stephen's Day)**

78. ComReg has identified two regulatory options:

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<sup>22</sup> An Post would be required to clearly advise postal service users of the access/delivery points it would service as part of the USO.

- **Option 1** – do not grant a derogation – this would require An Post to provide a full universal postal service on the first working day after 26 December (St. Stephen's Day); or
- **Option 2** – grant a full derogation with conditions attached.<sup>23</sup> An Post would no longer have any legal obligation to provide the USO and in particular to collect and/or deliver any mail on the first working day after 26 December (St. Stephen's Day).

## **6.4 Steps 3, 4 and 5: Determine and assess the impacts on stakeholders and competition and chose the best option**

79. ComReg considers that the stakeholders affected by the decision to be made by ComReg, under the options set out above, are:

- postal service users, including individual consumers, SMEs, large businesses, Government departments and other public bodies, non-Governmental organisations including charities, and e-fulfillment service providers;
- An Post, the designated USP; other postal service providers, currently DX Ireland, Eirpost (Division of Nightline Logistics Group), Fastway Couriers, Lettershop Postal, TICo Mail Works, RR Donnelley Document Solutions (Ireland) and Sooner Than Later Solutions; and
- International inbound and outbound mail services – in Ireland there are significant volumes for inbound international mail.

### **Policy issue 1: Good Friday: impact on stakeholders and competition**

80. Option 1: If no derogation is granted there would be a resulting benefit to postal service users as they would receive a full universal postal service on Good Friday. However, data provided by An Post indicates that usage of postal services on Good Friday is very low and so it would appear that such a benefit would not significantly impact on postal service users, given the low demand for postal services on that day.

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<sup>23</sup> This derogation would be conditional on An Post providing a collections service for certain public access points. If such a derogation was granted, then these collection arrangements would be advertised as part of An Post's Communications Plan for the Christmas holiday period.

81. If no derogation is granted there would be a significant impact on An Post in terms of increased operational costs. Providing a full service on Good Friday would require An Post to nearly double the number of delivery routes which it currently operates on that day and increase its collection routes by c. 80%. ComReg estimates that as a result An Post would incur significant additional costs over its current costs on Good Friday. Although An Post has not provided specific details, in the majority of instances, these are likely to be the more costly routes to operate which also have the least volumes of mail to collect or deliver. Given the current staffing structure in An Post, providing this full service would increase the per unit costs, given mail volumes on Good Friday as claimed by An Post and the level of delivery point closures on that day.
82. Option 2: There should be no significant impact on postal service users as a result of Option 2, as the level of service which they currently receive would remain essentially the same. However under this option, the services provided by An Post would not be protected by the USO.
83. There should be no significant impact on An Post as a result of Option 2, as the level of service which it currently provides would remain essentially the same.
84. Option 3: As per option 2, there should be no significant impact on postal service users as a result of Option 3, as the level of service which they currently receive would remain essentially the same. Importantly, unlike Option 2, these services would also continue to be provided as part of the USO, and so would fall within the scope of the 2011 Act.
85. There should be a benefit to An Post under Option 3 in that it would maintain its current level of service as part of its USO which should allow it the possibility of retaining customers in the face of competition without incurring any additional operational costs.
86. There should be no impact on other postal service providers under Option 3 as there would be no change to the service which has been provided by An Post until now and they will continue to be able to compete for postal service user business on this day. Indeed there could be opportunities for other service providers to gain market share by providing postal services to the areas not covered by An Post. International inbound and outbound services would continue as per current service level, and these inbound services would be regulated.

87. For policy issue 1, the conclusion of this RIA is to grant a part-derogation for Good Friday. Under Option 3, the needs of postal service users should be protected as postal services provided on Good Friday would remain within the universal postal service, while An Post should not incur any additional operational costs as it would not be required to increase its current level of service. Option 3 would also appear to satisfy current user demand for postal services on Good Friday, based on data provided by An Post in support of its application for derogation, and it would accord with ComReg's statutory duty to promote the availability of an affordable universal postal service for the benefit of all postal service users. In addition, other postal service providers should not be impacted by option 3.

### **Policy issue 2: Mondays following any public holiday which falls on a Saturday or a Sunday: impact on stakeholders and competition**

88. Option 1: If a derogation is not granted there would be a resulting benefit to postal service users as they would receive a full universal postal service on Mondays following a public holiday which falls on a weekend. However, data provided by An Post indicates that usage of postal services on such Mondays is very low and so it would appear that such a benefit would not significantly impact on postal service users, given the low demand for postal services on that day.

89. If a derogation is not granted there would be a significant impact on An Post in terms of the increased operational costs of providing a full collection and delivery service on Mondays following a public holiday which falls on a weekend.

90. Option 2: There should be no impact on An Post, postal service users, or other postal service providers under Option 2 as there would be no change to the current level of service.

91. For policy issue 2, the conclusion of this RIA is to grant a derogation for Mondays following any public holiday which falls on a Saturday or a Sunday. This appears to be a proportionate measure which will keep An Post's operational costs on that date to the necessary minimum without there being any resultant detrimental effect on consumers or on competition. Further, it accords with ComReg's function to ensure that postal service users may avail of an affordable universal postal service that meets their reasonable needs.



### **Policy issue 3: 24 December (Christmas Eve) collections: impact on stakeholders and competition**

92. Option 1: If a derogation for collections on 24 December (Christmas Eve) is not granted there would be a resulting benefit to postal service users as they would receive a full universal postal service on that date. However, data provided by An Post indicates that while demand for delivery of mail on 24 December (Christmas Eve) is high, demand for collection of mail on that date is very low. The benefit to postal service users of having a full collection and delivery service on that date is therefore likely to be minimal.
93. ComReg agrees with An Post that demand for collections on 24 December is low as people typically seek to ensure that Christmas postal packets, and particularly those containing presents or cards, are delivered on or before 24 December (Christmas Eve). Delivery, and not collection, is the key consumer demand on Christmas Eve. In addition, most businesses close for the Christmas period and ComReg does not consider that there is high demand by businesses for a collections service on 24 December (Christmas Eve) and that business transactional mail is normally sent out well in advance of that date. An Post submits that mail collections volumes on 24 December (Christmas Eve) are only 20% of a typical days volumes and in any event will not be delivered until after the Christmas break. A full collections service on that day would therefore increase the per unit cost for that day, given the current staffing structure in An Post.
94. Option 2: If a derogation for collections on 24 December (Christmas Eve) was granted, the number of postal service users that may be negatively impacted to some degree is considered small and the extent of any negative impacts is likely to be minimal. As against that, granting the derogation would save An Post a full day's collections cost (An Post has circa 8,831 access points from which it provides a daily collection service<sup>24</sup>). Due to the low demand for collections services on Christmas Eve other postal service providers availing of An Post's services are also not likely to require a collections service on this day.
95. For policy issue 3, the conclusion of this RIA is to grant a derogation for collections on 24 December. This appears to be a proportionate measure which will keep An Post's operational costs on that date to the necessary minimum, without there being any resultant detrimental effect on consumers or on competition, and it accords with ComReg's function to ensure that postal service users may avail of an affordable universal postal service that meets their reasonable needs.

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<sup>24</sup> As stated in appendix 2 of An Post's application (ComReg Document 14/94a)



#### **Policy issue 4: First working day after 26 December (St. Stephen's Day): impact on stakeholders and competition**

96. Option 1: If a derogation for deliveries and collections for the first working day after 26 December (St. Stephen's Day) is not granted, there would be a resulting benefit to postal service users as they would receive a full universal postal service on that date. However, mail volume data provided by An Post indicates that demand for delivery and collection services on this date is very low. The benefit to postal service users of having a full collection and delivery service on that date is therefore likely to be minimal.
97. If a derogation is not granted there would be a significant impact on An Post in terms of the increased operational costs of providing a full collection and delivery service on the first working day after 26 December (St. Stephen's Day).
98. Option 2: If a full derogation is granted with conditions attached as set out at paragraph 109 of Consultation 14/94, the number of postal service users that may be negatively impacted to some degree is considered small and the extent of any negative impacts is likely to be minimal as this approach would mitigate any security and confidentiality issues which might arise. As against that, granting the derogation would save An Post a full day's operations costs, for collections and deliveries.
99. For policy issue 4, the conclusion of this RIA is to grant a full derogation with conditions attached for the first working day after 26 December (St. Stephen's Day). This appears to be a proportionate measure which will keep An Post's operational costs on that date to the necessary minimum, without there being any resultant detrimental effect on consumers or on competition, and it accords with ComReg's function to ensure that postal service users may avail of an affordable universal postal service that meets their reasonable needs.

## 7 Decisions

1. These Decisions are made by the Commission for Communications Regulation ("ComReg") pursuant to its powers under section 16 of the Communications Regulations (Postal Services) Act 2011 ("2011 Act").

### Background

2. ComReg is the designated national regulatory authority for postal services in the State and An Post is the designated "universal postal service provider" ("USP"), required to provide a postal service of a minimum standard to all persons in the State. ComReg and An Post are appointed to their respective roles by sections 14 and 17 of the 2011 Act.
3. Section 16(1)(a) of the 2011 Act sets the scope of the "universal postal service" to be provided by An Post as the designated USP as meaning that on every working day there is at least one clearance and one delivery to the home or premises of every person in the State, *except in such circumstances or geographical conditions as ComReg considers to be exceptional*.
4. An Post, by written application to ComReg dated 11 February 2014, sought ComReg to form a decision that the circumstances surrounding certain specified "working days" (meaning a day which is not a Saturday, Sunday or public holiday<sup>25</sup>)<sup>26</sup> are so exceptional as to justify the removal of those working days from the USO. The term "derogation" is used to describe the removal of a working day from the USO. An Post sought a derogation from its full USO for each of the specified working days which would mean in particular that An Post would not be required to collect or deliver mail on those days. The one exception was 24 December, for which An Post would provide a full delivery services but sought a derogation for collections only.
5. On 8 September 2014 ComReg commenced its public consultation (Consultation Document 14/94) on An Post's application (Document 14/94a) for derogations from the universal postal service in respect of certain working days which has resulted in this Decision.
6. For the purpose of considering an exception to the provision of the universal postal service under section 16 (1)(a) of the 2011 Act, ComReg has had regard to;
  - the technical, economic and social environment and to the needs of postal service users in accordance with section 16 (6) of the 2011 Act,

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<sup>25</sup> The Second Schedule to the Organisation of Working Time Act 1997 sets out the nine dates which are the official annual "public holidays" in the State.

<sup>26</sup> The meaning of the term "*working day*" as defined in the Interpretation Act 2005.

- its objectives set out in section 12(1)(c) of the Communications Regulation Act 2002, in particular that to promote the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,
- the reasonable measures to be taken by ComReg under section 12(2A) which are aimed at achieving its objectives under 12(1)(c), and
- the requirement on ComReg to take proportionate measures under 12(3).

## The Decisions

1. ComReg, pursuant to Section 16(1)(a) of the Act 2011 and on foot of an application made to it by An Post and following public consultation, and having had regard to all relevant facts before it, hereby sets out its four separate decisions (“the Decisions”) to the effect that exceptional circumstances apply in respect of each of the four working days set out below, such that ComReg will grant derogations from the universal postal service obligation (“USO”) in respect of each working day, to the extent set out in the decisions below:
2. The Decisions shall be construed together with ComReg’s reasoning and analysis as set out in Documents 14/94 and 14/135.
3. Words and terms herein have the same meaning as in the 2011 Act, unless otherwise stated.
4. For the avoidance of doubt, nothing in the Decisions shall operate to limit ComReg in the exercise and performance of its statutory powers or duties.
5. The Decisions shall apply from 1 January 2015.

### *Decision 1 - Derogation from USO for Good Friday*

A part derogation from the USO shall apply for Good Friday in each calendar year whereby An Post shall, on each Good Friday, be required to provide a collections and/or deliveries service to each of the access points<sup>27</sup> and delivery points it is currently servicing as of the date of this decision, fixed by reference to the scope and level of service which An Post currently provides, as set out in its application for derogation.

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<sup>27</sup> “access point” as defined by section 6 of the 2011 Act means; any box, receptacle or other facility, including post boxes, provided for the public either on the public road or at a post office, where postal packets, or any class of postal packets, may be deposited with a postal service provider by senders for transmission by post;

Within four weeks of the date of this Decision, An Post will provide ComReg with detailed information of all the access points and delivery points by collection/delivery route and by delivery office which it currently services, and of the points which it currently does not service on Good Friday.

Within eight weeks of the date of this Decision, ComReg will advise An Post of the format and detail of information that An Post will publicise, on its website, information as to scope of the collections and/or deliveries service being provided on each Good Friday.

Within 12 weeks of the date of this Decision, An Post shall publicise, on its website, information as to scope of the collections and/or deliveries service being provided on each Good Friday and in the format and detail required by ComReg.

Following this Decision, any further changes to the level of service provided for any the identified access/delivery points will require the prior approval of ComReg. In addition, prior approval will also be required for the servicing of any new access/delivery points.

*Decision 2 - Derogation from USO for Mondays following a public holiday which falls on a Saturday or Sunday*

A full derogation from the USO shall apply for Mondays following a public holiday which falls on a Saturday or Sunday, in each calendar year. This applies for any of the following public holidays when they fall on a Saturday or Sunday:

- 17 March (St. Patrick's Day),
- 25 December (Christmas Day),
- 26 December (St. Stephen's Day), and
- 1 January (New Year's Day).

*Decision 3 - Derogation from USO for 24 December (Christmas Eve) (derogation for collections only)*

A derogation from the USO for mail collections only shall apply for 24 December (Christmas Eve) in each calendar year. An Post has an obligation to provide the remainder of the USO and in particular to deliver mail on that date.

*Decision 4 - Derogation from USO for First working day after 26 December (St. Stephen's Day)*

A full derogation from the USO shall apply for the first working day after 26 December (St. Stephen's Day) in each calendar year.

The granting of this derogation is conditional on An Post providing a collections service for those public access points which it considers may carry security and confidentiality risks, due to the possibility of mail volume capacity overflow if those access points are not cleared over the Christmas period. An Post shall also advise ComReg before 1 December in each year of those access points<sup>27</sup>, including details of the collections arrangements it has put in place to mitigate the risk, if any.

The requirements set out below attach to and form part of each of the four decisions set out above:

An Post shall implement the following communications plan for each of the derogations granted in the above decisions;

- The An Post website and Post Office notices will provide detailed information of each of the derogations. This information will be prominently displayed and highlighted for an appropriate period in advance of the relevant days;
- An Post's access points notice plates will be updated with new information regarding the level of service and in the format requested by ComReg. Such a programme is to be completed for all access points within 18 months of this decision;
- Full details of the derogations granted will be clearly stated in An Post's USO terms & conditions (and in any subsequent updated versions);
- In respect of the derogation for Good Friday - An Post must clearly advise postal service users on its website (and in the format and detail required by ComReg) of the derogation granted and of the access/delivery points it shall service and those it shall not service on Good Friday as part of its USO;
- In respect of the derogations relating to the Christmas period – All An Post Christmas period public posting notices will annually include full details of the relevant derogations and the services to be provided;
- For each of the derogations granted An Post must ensure that its customer communications are adequate, easily understood and timely so that postal service users are fully aware of the universal service being provided and in particular the arrangements for collection and delivery of mail on the dates for which such derogation is granted. An Post should provide all relevant details of its level of service to its customers.

6. In accordance with section 16(8) of the 2011 Act, ComReg shall publish this Response to Consultation and Decision document and shall also notify the following authorities of the exceptions which have been granted under section 16 (1)(a) of the 2011 Act, hereunder:

(a) the Minister for Communications, Energy and Natural Resources,

(b) the European Commission, and

(c) the national regulatory authorities in all Member States,

**Kevin O'Brien**

Commissioner, The Commission for Communications Regulation

Dated 15 December 2014

## Annex: 1 Legal basis

A 1.1 The Communications Regulation (Postal Services) Act 2011 (“2011 Act”) became law on 2nd August 2011 and established a new framework for the regulation of postal services in the State. The 2011 Act also gives effect in Irish law to the European Postal Directive which creates a harmonised framework for the regulation of postal services in all Member States (Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC).

A 1.2 Section 10 of the Communications Regulation Act 2002 – 2011 sets out ComReg’s two *functions* in relation to postal services:

- *to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,*
- *to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011*

A 1.3 Section 12(1)(c) of the Communications Regulation Act 2002 – 2011 sets out ComReg’s *objectives*, in exercising the above functions:

- (i). *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 postal service users,*
- (ii). *to promote the interests of postal service users within the Community, and*
- (iii). *subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision.*

A 1.4 Section 12(2A) of the Communications Regulation Act 2002 – 2011 also sets out that ComReg “*shall take all reasonable measures aimed at achieving*” the objectives referred to in subsection (1)(c), including:

(2A) *In relation to the objectives referred to in subsection (1)(c), objectives, including—*

(a) *establishing such monitoring and regulatory procedures for the purposes of ensuring compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 as are necessary to secure the provision of a universal postal service,*

(b) *ensuring that postal service users may avail of a universal postal service that meets their reasonable needs,*

*(c) in so far as the facilitation of competition and innovation is concerned, ensuring that postal service users derive maximum benefit in terms of choice, price and quality, and*

*(d) in so far as the promotion of the interests of postal service users within the Community is concerned—*

*(i) ensuring a high level of protection for postal service users in their dealings with postal service providers, in particular by—*

*(I) ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,*

*And*

*(II) consulting and cooperating with the National Consumer Agency as appropriate,*

*and*

*(ii) addressing the needs of specific social groups, in particular, disabled postal service users.*

A 1.5 Section 14 of the 2011 Act designates ComReg as “*the national regulatory authority for the purposes of the Directive*” while Section 17 designates An Post as the sole universal postal service provider (“USP”) in the State for the first 12 years of the Act, subject to review by ComReg after the first 7 years.

A 1.6 Section 16(1) of the 2011 Act defines the “*universal postal service*” to a large extent, setting out that it entails at least one clearance and one delivery to the home or premises of every person in the State on every working day (i.e. Monday – Friday, excluding national public holidays) “*except in such circumstances or geographical conditions as the Commission considers to be exceptional*”.

A 1.7 Section 16(1) further specifies that the following services fall within the universal postal service:

- the clearance, sorting, transport and distribution of postal packets up to 2kg and parcels up to 20kg (the 20kg figure may be adjusted by ComReg)
- a registered items service
- an insured items service



- free of charge postal services for to blind and partially-sighted persons.

A 1.8 Section 16(9) of the 2011 Act requires that ComReg shall make regulations specifying the services to be provided by a USP, for the purposes of ensuring that the universal postal service develops in response to the technical, economic and social environment and to the reasonable needs of users. ComReg made such regulations in July 2012, following public consultation (the Communications Regulation (Universal Postal Service) Regulations 2012 (S.I. 280 of 2012) - see ComReg Document No. 12/81).

A 1.9 Section 21(1) of the 2011 Act requires of An Post to provide the universal postal service in accordance with its obligations imposed under the 2011 Act, and that this can only be interrupted, suspended or restricted (in all or in part) in cases of '*force majeure*'. Section 21(1) also obliges An Post to provide identical services to postal service users under comparable conditions.

A 1.10 In accordance with section 16(6) of the 2011 Act, when ComReg is considering any exception to the provision of a universal postal service provided under 16(1)(a) of the 2011 Act, it "*shall have regard to the technical, economic and social environment and to the needs of postal service users.*"

A 1.11 Section 16(8) requires ComReg to notify in writing any exception granted for the purposes of subsection (1)(a) to; (a) the Minister, (b) the European Commission, and (c) the national regulatory authorities in all Member States, and to publish any such exception granted.

## Annex: 2 Table of Christmas Period Derogations (for illustrative purposes)

	2015	2016	2017	2018	2019	2020	2021	2022	2023
<b>23 Dec</b>	Wednes- day  Last day of normal service	Friday  Last day normal service	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>	Monday  Last day of normal service	Wednes- day  Last day of normal service	Thursday  Last day of normal service	Friday  Last day of normal service	Saturday  <b>N/W</b>
<b>24 Dec</b>	Thursday  ✓	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>	Monday  ✓	Tuesday  ✓	Thursday  ✓	Friday  ✓	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>
<b>25 Dec</b>	Friday  <b>N/W</b>	Sunday  <b>N/W</b>	Monday  <b>N/W</b>	Tuesday  <b>N/W</b>	Wednes- day  <b>N/W</b>	Friday  <b>N/W</b>	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>	Monday  <b>N/W</b>
<b>26 Dec</b>	Saturday  <b>N/W</b>	Monday  <b>N/W</b>	Tuesday  <b>N/W</b>	Wednes- day  <b>N/W</b>	Thursday  <b>N/W</b>	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>	Monday  <b>N/W</b>	Tuesday  <b>N/W</b>
<b>27 Dec</b>	Sunday  <b>N/W</b>	Tuesday  ✓	Wednes- day  ✓	Thursday  ✓	Friday  ✓	Sunday  <b>N/W</b>	Monday  ✓	Tuesday  ✓	Wednes- day  ✓
<b>28 Dec</b>	Monday  ✓	Wednes- day  ✓	Thursday  Normal service resumes	Friday  Normal service resumes	Saturday  <b>N/W</b>	Monday  ✓	Tuesday  ✓	Wednes- day  ✓	Thursday  Normal service resumes
<b>29 Dec</b>	Tuesday  ✓	Thursday  Normal service resumes	Friday  Normal service	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>	Tuesday  ✓	Wednes- day  ✓	Thursday  Normal service resumes	Friday  Normal service
<b>30 Dec</b>	Wednes- day	Friday  Normal service	Saturday  <b>N/W</b>	Sunday  <b>N/W</b>	Monday  Normal service resumes	Wednes- day	Thursday  Normal service resumes	Friday  Normal service	Saturday  <b>N/W</b>

	2015	2016	2017	2018	2019	2020	2021	2022	2023
	Normal service resumes					Normal service resumes			
<b>31 Dec</b>	Thursday Normal service	Saturday <b>N/W</b>	Sunday <b>N/W</b>	Monday Normal service	Tuesday Normal service	Thursday Normal service	Friday Normal service	Saturday <b>N/W</b>	Sunday <b>N/W</b>
<b>1 Jan</b>	Friday <b>N/W</b>	Sunday <b>N/W</b>	Monday <b>N/W</b>	Tuesday <b>N/W</b>	Wednesday <b>N/W</b>	Friday <b>N/W</b>	Saturday <b>N/W</b>	Sunday <b>N/W</b>	Monday <b>N/W</b>
<b>2 Jan</b>	Saturday <b>N/W</b>	Monday ✓	Tuesday Normal service	Wednesday Normal service	Thursday Normal service	Saturday <b>N/W</b>	Sunday <b>N/W</b>	Monday ✓	Tuesday Normal service
<b>3 Jan</b>	Sunday <b>N/W</b>	Tuesday Normal service	Wednesday Normal service	Thursday Normal service	Friday Normal service	Sunday <b>N/W</b>	Monday ✓	Tuesday Normal service	Wednesday Normal service

This table is provided for illustrative purposes only and shows how the Christmas period derogations will apply during the period 2015- 2023 which is the period of An Post's designation as USP under section 17 of the 2011 Act (from 2 August 2011 – 1 August 2023).

For information purposes the New Year's Day for the incoming year is shown in the previous year's column i.e. 1 January 2016 is shown in the column for 2015.

The table above shows the derogations granted by ComReg which straddle the Christmas period and which are as follows:

- derogation for collections only on 24 December (Christmas Eve). Deliveries will be provided as normal (see section 3.3).
- derogation for the Monday or Tuesday following public holidays; 25 December (Christmas Day), 26 December (St. Stephen's Day) and 1 January (New Year's Day) when falling on a Saturday or Sunday (see section 3.2)

- derogation for the first working day after St. Stephen's Day (see section 3.4). Due to the derogation being granted for 25 December (Christmas Day) and/or 26 December (St. Stephen's Day) if falling on a Saturday or Sunday, the derogation day for the first working day after 26 December (St. Stephen's Day) will immediately follow those derogation days when applicable.

Note on symbols used in above table:

✓ indicates that An Post has been granted a derogation from its universal postal service for this working day.

**N/W** indicates this day is an official non-working day i.e. Saturday, Sunday or a public holiday. There will be no universal postal service on this day.

"Normal service" indicates that An Post has not applied for a derogation for this working day and full universal postal service (including collections and deliveries) will be provided by An Post on this working day.