

STATUTORY INSTRUMENTS

S.I. No. 401 of 2004

**COMMUNICATIONS REGULATION ACT 2002 (SECTION 30) POSTAL
LEVY ORDER 2004**

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COMMUNICATIONS REGULATION ACT 2002 (SECTION 30)
POSTAL LEVY ORDER 2004

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

1. (1) This Order may be cited as the Communications Regulation Act 2002 (Section 30) Postal Levy Order, 2004.

(2) This Order comes into operation on 1 July 2004.

2. (1) In this Order—

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

“applicable undertaking” means all providers of postal services who are designated as a universal service provider or hold, or are required to hold, a postal service authorisation in accordance with Regulation 7 of the Regulations;

"levy period" means the period commencing 1 July 2004 and ending on 30 June 2005;

"quarter" means a period of 3 months ending on 30 September, 31 December, 31 March and 30 June;

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

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

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

“universal service” has the meaning assigned to it by the Regulations;

"universal service provider" means a postal service provider designated as a universal service provider by the Minister in accordance with Regulation 4(2) of the Regulations;
and any cognate words shall be construed accordingly.

(2) In this Order—

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

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

3. This Order applies to applicable undertakings.

4. (1) A levy is imposed on the universal service provider and every other applicable undertaking, in the amounts specified in Article 5, in respect of the levy period.

(2) The levy imposed by paragraph (1) shall, subject to Article 5, be payable to the Commission, by each applicable undertaking, in four separate instalments, with one such instalment payable at the end of each quarter of the levy period.

5. (1) The amount of the levy imposed on the universal service provider, in respect of the levy period, is:

(a) 0.25 per cent of the relevant turnover, for the relevant financial year, of the universal service provider arising from the provision of the universal service;
and

(b) 0.075 per cent of the relevant turnover, for the relevant financial year, of the universal service provider arising from the provision of postal services falling outside the scope of the universal service.

(2) The amount of the levy imposed on each applicable undertaking, other than the universal service provider, in respect of the levy period, is the greater of 0.075 per cent of the relevant turnover of each such applicable undertaking, for the relevant financial year, or €1,000.

(3) Where an applicable undertaking is liable to pay the levy for part only of the levy period, the amount of the levy imposed on the applicable undertaking in respect of

the levy period shall be the appropriate proportion of the amount specified in paragraph 1, or 2, as appropriate. In this paragraph, "appropriate proportion" means that proportion of the levy period for which the applicable undertaking is liable to pay the levy, to the levy period as a whole.

(4) Where, in respect of the levy period or part thereof, it is, by reason of the date on which the relevant financial year of an applicable undertaking terminates, impractical for an applicable undertaking to determine its liability under this Article for the purpose of making payments under Article 4 as they fall due, the applicable undertaking may, subject to Article 6, assess its liability on the basis of its relevant turnover in its financial year ending in the year commencing on 1 July 2003 and ending on 30 June 2004, and may make provisional payments under Article 4 accordingly.

6. (1) Every applicable undertaking, with a relevant turnover in excess of €1,500,000 in the relevant financial year shall, within 21 weeks of the end of its relevant financial year, submit to the Commission a statement, certified by a person who is qualified under the Companies Acts 1963 to 2003, for appointment as an auditor of a company, of the relevant turnover of the applicable undertaking in question, in the relevant financial year. The statement of a universal service provider shall distinguish between postal services provided within the scope of the universal service and postal services provided outside the scope of the universal service.

(2) Where the amount paid by an applicable undertaking in accordance with Articles 4 and 5 in respect of the levy period is less than the amount payable by reference to the statement of relevant turnover provided to the Commission in accordance with paragraph (1), the applicable undertaking concerned shall, within such time or times as may be specified by the Commission, in a request in writing, pay to the Commission the balance of the levy so payable.

(3) Where the amount paid by an applicable undertaking in accordance with Article 5(4) in respect of the levy period is greater than €1,000 and more than the amount payable by reference to the statement of relevant turnover submitted to the Commission in accordance with paragraph (1), the Commission shall, as soon as may be after the end of the levy period, repay to the applicable undertaking concerned the excess amount so paid.

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

(a) be retained by the Commission to be offset against levy obligations for the subsequent year, or

(b) be refunded proportionately to the applicable undertakings on whom the levy is imposed.

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

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

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

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

GIVEN under the Official Seal of the Commission for Communications Regulation,
28 June 2004.

JOHN DOHERTY, Chairperson

EXPLANATORY NOTE

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

This Order makes provision for a levy on providers of postal services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services. A revised levy order will be made for the levy year commencing 1 July 2005 and ending 30 June 2006, and for subsequent levy years.