



STATUTORY INSTRUMENTS

S.I. No. 135 of 2008



EUROPEAN COMMUNITIES (POSTAL SERVICES) (AMENDMENT)
REGULATIONS 2008

(Prn. A8/0604)

EUROPEAN COMMUNITIES (POSTAL SERVICES) (AMENDMENT)
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I, EAMON RYAN, Minister for Communications, Energy and Natural Resources, in exercise of powers conferred on me by section 46A(3), (4) and (7) of the Communications Regulation Act 2002 (No. 20 of 2002) (inserted by section 14 of the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007)), (as adapted by the Communications, Marine and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2007 (S.I. No. 706 of 2007)) being satisfied that it is necessary for the purpose of giving full effect to Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997¹ as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002² hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Postal Services) (Amendment) Regulations 2008.

2. The European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002) are amended—

(a) in Regulation 13, by inserting the following paragraph after paragraph 4:

“(5) For the purpose of ensuring that the universal service provider takes corrective action under paragraph (4), the Regulator may give a direction to a universal service provider to take such action.” and

(b) by substituting the following for Regulation 18:

“18. (1) A direction issued by the Regulator under these Regulations shall be in writing, state the reasons on which it is based and be addressed to the universal service provider concerned, and, as soon as practicable, be delivered by hand or by registered or certified post to the registered address of the provider and shall be deemed to have been delivered as of the date so delivered.

(2) (a) Where the Regulator finds that a universal service provider has not complied with a direction under these Regulations, the Regulator shall notify the universal service provider of such findings and give the universal service provider an opportunity to state its views or remedy any non-compliance not later than—

¹OJ No. L15, 21.1.98, p.14

²OJ No. L176, 5.7.02, p.21

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 9th May, 2008.*

- (i) one month after issue of notification,
 - (ii) such shorter period as may be agreed by the Regulator and the universal service provider concerned or stipulated by the Regulator in case of repeated non-compliance, or
 - (iii) such longer period as may be specified by the Regulator.
- (b) The Regulator may amend or revoke a notification under this regulation.
- (c) The Regulator may publish, in such manner as it sees fit, any notification given by it under this Regulation, subject to the protection of the confidentiality of any information which the Regulator considers confidential.

(3) Where, at the end of the period referred to in paragraph (2)(a), the Regulator is of the opinion that a universal service provider has not complied with a direction under these Regulations, the Regulator may apply to the High Court for an order to direct the universal service provider to comply with such direction.

- (4) (a) An application for an order under paragraph (3) may include an application for an order to pay such amount, by way of financial penalty, as the Regulator may propose as appropriate in light of the non-compliance.
- (b) In deciding an application under paragraph (3), the Court shall decide the amount (if any) of the financial penalty payable by the universal service provider, and shall not be bound by the amount proposed by the Regulator save as to its upper limit.
- (c) In deciding the amount (if any) that should be payable by the universal service provider, the Court shall consider the circumstances of the non-compliance, including—
- (i) its duration,
 - (ii) the effect on consumers, users and other operators,
 - (iii) the submissions of the Regulator on the appropriate amount, and
 - (iv) any excuse or explanation for the non-compliance.”.



GIVEN under my Official Seal,
2 May 2008

EAMON RYAN

Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

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

The purpose of these Regulations is to amend the European Communities (Postal Services) Regulations 2002 (Statutory Instrument Number 616 of 2002) so as to empower the Commission for Communications Regulation, ComReg, to apply to the High Court for the application of a financial penalty to An Post, in the event that An Post, in its role as universal service provider, fails to comply with a direction issued by ComReg pursuant to the Regulations.

BAILE ÁTHA CLIATH
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