

Subsidiary Legislation made under ss. 4H and 4S.

Postal Services (Authorisation) Regulations 2012

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Transposing:
Directive 97/67/EC

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred on him by sections 4H and 4S of the Post Office Act, and of all other enabling powers, the Minister, in order to complete the transposition of Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Postal Services (Authorisation) Regulations 2012 and come into operation on the day of publication.

Interpretation.

2. In these Regulations, except where the context otherwise requires—

“Act” means the Post Office Act;

“authorised person” means a person who is authorised pursuant to Part I of the Act to provide postal services in Gibraltar;

“specific obligations” means the obligations, conditions or requirements imposed by the Authority on any authorised person under Part I of the Act.

Procedure for the grant of a general authorisation.

- 3.(1) No person shall provide a postal service outside the scope of the universal service unless, before beginning to provide it, that person has notified the Authority of his intention pursuant to section 4H of the Act.

- (2) A notification for the purposes of this regulation must—

- (a) be sent to the Authority in such form and manner as the Authority may, from time to time, publish; and

- (b) contain all such information as the Authority may require.

- (3) The Authority may require a notification to contain the following information—

- (a) a short description of the service the subject matter of the notification;

- (b) the estimated commencement date for the provision of the notified service;

- (c) particulars identifying the person giving the notification including, in the case of a body corporate, the company registration number, its business address and, where that address differs from the address of its registered office, the address of its registered office;
 - (d) particulars identifying one or more persons who may be contacted if there is an emergency that is caused by or affects the provision of the notified service;
 - (e) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (c) and (d); and
 - (f) payment to the Authority of the appropriate fee.
- (4) A person who has given a notification for the purposes of subregulation (1) must, before—
- (a) providing the notified service with any significant differences; or
 - (b) ceasing to provide it,
- give a notification to the Authority of the differences or of his intention to cease to provide the service.
- (5) The reference in subregulation (4) to providing a notified service with significant differences is a reference to continuing to provide the service after a change to the information supplied under subregulation (1) in relation to the matters referred to in subregulation (3)(a) and (b).
- (6) A person shall notify the Authority of any changes to the information supplied under subregulation (1) in relation to the matters referred to in subregulation (3)(c) to (e) within 7 days of such change.
- (7) Upon receipt by the Authority of a notification made pursuant to subregulation (1) and which is in conformity with subregulations (2) and (3), the person concerned is deemed to be an authorised person who, as such, is entitled to provide the notified service, subject to—
- (a) such conditions as may be applicable to the provision of that service as have been specified by the Authority in a direction issued to him;
 - (b) such specific obligations as may be imposed on that person; and
 - (c) that person's compliance with any other requirement applicable to him for the purpose of providing that service.

Rights under a general authorisation.

4. Where a person has notified the Authority under regulation 3, that person shall—

- (a) be considered an authorised person; and
- (b) have the right to provide the postal services outside the scope of the universal service in Gibraltar.

The power of the Authority to require information.

5.(1) The Authority shall monitor and supervise the compliance with conditions and specific obligations and for this purpose shall be able to require a person falling within subregulation (2) to provide it with all such information as the Authority considers necessary for any one or more of the purposes listed in subregulation (3).

(2) The persons falling within this subregulation are—

- (a) a person who is, or has been, an authorised person;
- (b) a person to whom an individual licence has been granted pursuant to section 4G of the Act; or
- (c) a person not falling within the preceding paragraphs who appears to the Authority to have information required by it for any one or more of the purposes listed in subregulation (3).

(3) The information that may be required by the Authority under subregulation (1) includes, in particular, information that it may require for any one or more of the following purposes—

- (a) systematic or case-by-case verification of compliance with specific obligations;
- (b) case-by-case verification of compliance with conditions set where—
 - (i) it has received a complaint against the person from whom the information is required,
 - (ii) it has other reasons to believe that a condition has not been, or is not being, complied with by that person, or
 - (iii) in case of an investigation by the Authority on its own initiative;

- (c) establishing procedures for and assessment of requests for the grant of an individual licence; or
- (d) clearly defined statistical purposes.

The power of the Authority to impose penalties for failure to comply with information requirements.

6.(1) This regulation applies where—

- (a) a person has been requested to provide any information under regulation 5 or sections 4 and 4P of the Act; or
- (b) the Authority has allowed the person requested an opportunity for making representations about the matters requested; and
- (c) the period allowed for the making of the representations has expired.

(2) The Authority may impose a penalty on the person—

- (a) to whom subregulation (1) applies; and
- (b) the Authority is satisfied that the person has not, during the period allowed under the request, complied with the request in one or more of its respects.

(3) The amount of a penalty imposed under this regulation is to be such amount not exceeding £5,000.00 as the Authority determines to be both—

- (a) appropriate; and
- (b) proportionate to the importance of the information requested.

(4) In making that determination the Authority must have regard to—

- (a) any representations made to it by the requested person; and
- (b) any steps taken by him towards complying with the request.

(5) Where the Authority imposes a penalty on a requested person under this regulation, it shall—

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- (a) within one week of making its decision to impose the penalty, notify that person of that decision and of the reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (6) A penalty imposed under this regulation—
 - (a) must be paid to the Authority; and
 - (b) if not paid within the period fixed by it, is to be recoverable by the Authority as a civil debt.
- (7) A requested person shall be liable, for continued contravention, to a default fine of £100.00 for each day, or part of a day, from the expiry of the period referred to in subregulation (1)(c) until the day on which the information is provided.

Notification of contravention of conditions or specific obligations.

7.(1) Where—

- (a) on the basis of information it has obtained pursuant to regulation 5(1), the Authority determines that a person is contravening, or has contravened, a condition or specific obligation applicable to that person; or
- (b) a person has failed to comply with a request for information made by the Authority pursuant to regulation 5, and the Authority determines that there are reasonable grounds for believing that that person is contravening, or has contravened, a condition or specific obligation applicable to that person,

the Authority may give that person a notification under this regulation.

- (2) A notification under this regulation is one which—
 - (a) sets out the determination made by the Authority;
 - (b) specifies the contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subregulation (3).

(3) The things referred to in subregulation (2)(c) are–

- (a) making representations about the matters notified; and
- (b) complying with notified conditions or specific obligations of which he remains in contravention.

(4) The period for doing the things referred to in subregulation (2)(c) must be a reasonable period as determined by the Authority.

(5) A notification under this regulation–

- (a) may be given in respect of more than one contravention; and
- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(6) Where a notification under this regulation has been given, the Authority may give a further notification in respect of the same contravention of that condition or specific obligation if, and only if–

- (a) the contravention is one occurring after the time of the giving of the earlier notification;
- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

(7) For the purposes of this regulation a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if–

- (a) a previous notification under this regulation has been given in respect of the same contravention or in respect of another contravention of the same condition or specific obligation; and
- (b) the subsequent notification is given no more than 12 months after the day of the making by the Authority of a determination for the purposes of regulations 8 (2) or 9 (2) that the contravention to which the previous notification related did occur.

Enforcement notification for contravention of conditions or specific obligations.

8.(1) This regulation applies where—

- (a) a person (“the notified person”) has been given a notification under regulation 7;
- (b) the Authority has allowed the notified person an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

(2) The Authority may give the notified person an enforcement notification if it is satisfied that—

- (a) he has, in one or more of the respects notified, been in contravention of a condition or specific obligation specified in the notification under regulation 7; and
- (b) he has not, during the period allowed under that regulation, taken all such steps as the Authority considers appropriate for complying with that condition or specific obligation.

(3) An enforcement notification is a notification which imposes on the notified person a requirement to take such steps for complying with the notified condition or specific obligation as may be specified in the notification, including the cessation of the breach.

(4) A decision of the Authority to give an enforcement notification to a person—

- (a) must be notified by the Authority to that person, together with the reasons for the decision, without delay; and
- (b) must fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty shall be enforceable in civil proceedings by the Authority for an injunction or for any other appropriate remedy or relief.

Penalties for contravention of conditions or specific obligations.

9.(1) This regulation applies (in addition to regulation 8) where—

- (a) a person (“the notified person”) has been given a notification under regulation 7;
 - (b) the Authority has allowed the notified person an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) The Authority may impose a penalty on the notified person if he—
 - (a) has, in one or more of the respects notified, been in contravention of a condition or specific obligation specified in the notification under regulation 7; and
 - (b) has not, during the period allowed under that regulation, taken the steps the Authority considers appropriate—
 - (i) for complying with the notified condition or specific obligation; and
 - (ii) for remedying the consequences of the notified contravention of that condition or specific obligation.
- (3) Where a notification under regulation 7 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, a notified person shall be liable to a default fine for each day, or part of a day, from the expiry of the period referred to in subregulation (2)(b) until the day on which he has complied with the condition or specific obligation, or remedied the contravention.
- (5) The Authority may also impose a penalty on the notified person if he has contravened, or is contravening, a requirement of an enforcement notification given under regulation 8 in respect of the notified contravention.
- (6) Where the Authority imposes a penalty on a person under this regulation, it shall—
 - (a) within one week of making its decision to impose the penalty, notify that person of that decision and of its reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this regulation—

- (a) must be paid to the Authority; and
- (b) if not paid within the period fixed by the Authority, is to be recoverable by it as a civil debt.

Amount of penalty under regulation 9.

10.(1) The amount of a penalty imposed under regulation 9 is to be such amount not exceeding ten per cent of the turnover of the notified person's relevant business for the relevant period as the Authority determines to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(2) In making that determination the Authority must have regard to—

- (a) any representations made to it by the notified person;
- (b) any steps taken by him towards complying with the conditions or specific obligations contraventions of which have been notified to him under regulation 7; and
- (c) any steps taken by him for remedying the consequences of those contraventions.

(3) For the purposes of this regulation—

- (a) the turnover of a person's relevant business for a period shall be calculated in accordance with such rules as may be set out by a notice issued by the Minister; and
- (b) provision may also be made by such a notice for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made.

(4) In this regulation—

“relevant business” means a business to provide postal services in Gibraltar;

“relevant period”, in relation to a contravention by a person of a condition or a specific obligation, means—

- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under regulation 7;
 - (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and
 - (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.
- (6) The amount of the daily default fine referred to in regulation 9(4) shall be up to a quarter of one per cent of the penalty imposed under regulation 9.
- (7) In this regulation “the notified person” has the same meaning as in regulation 9.

Suspending service provision for contraventions of conditions or specific obligations.

11.(1) The Authority may give a direction under this regulation to a person (“the contravening person”) if it is satisfied that—

- (a) he is or has been in serious or repeated contravention of conditions or specific obligations that apply to that person;
 - (b) an attempt, by the imposition of penalties or the giving of enforcement notifications under regulation 8 or both, to secure compliance with the contravened conditions or specific obligations has failed; and
 - (c) the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) A direction under this regulation is—
- (a) a direction that the entitlement of the contravening person to provide postal services is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (3) A direction under this regulation—
- (a) must specify the services and facilities to which it relates; and

- (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (4) A direction under this regulation—
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to the Authority to be appropriate for the purpose of protecting that person's end-users.
- (5) The conditions referred to in subregulation (4)(b) may include a condition requiring the making of payments—
 - (a) by way of compensation for loss or damage suffered by the contravening person's end-users as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which those end-users have been put in consequence of the direction.
- (6) If the Authority considers it appropriate to do so (whether or not in consequence of representations or proposals made to it), it may revoke a direction under this regulation or modify its conditions—
 - (a) with effect from such time as it may direct;
 - (b) subject to compliance with such requirements as it may specify; and
 - (c) to such extent and in relation to such services or facilities, or parts of a service or facility, as it may determine.

Fees.

12.(1) A person who, at any time in a charging year, is a person to whom this regulation applies shall pay to the Authority a fee of—

- (a) £250 for general authorisation; and

- (b) £5,000 for an individual licence.
- (2) This regulation applies to—
 - (a) a person who obtained general authorisation under section 4H of the Act; and
 - (b) a person who has been granted individual licence under section 4G of the Act.
- (3) As soon as reasonably practicable after the end of each charging year, the Authority must publish a statement setting out, in respect of that year—
 - (a) the aggregate amounts of the fees for that year that have been received by the Authority pursuant to subregulation (1); and
 - (b) the aggregate amount of the fees for that year that remain outstanding and are likely to be paid or recovered.
- (4) In this regulation “charging year” means—
 - (a) the period beginning with the commencement of this regulation and ending with the next 31st March; or
 - (b) any subsequent period of 12 months beginning with 1st April.

Register to be established and maintained by the Authority.

- 13.(1) It shall be the duty of the Authority to establish and maintain a register of—
- (a) authorised persons; and
 - (b) individual licences granted by the Authority under Part I of the Act.
- (2) The Authority must record in the register—
- (a) every notification submitted to it under these Regulations; and
 - (b) every relevant information in relation to individual licences.
- (3) Information is relevant information for the purposes of subregulation (2)(b) if it relates to the grant, renewal, transfer, variation or revocation of an individual licence.

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(4) Information recorded in the register must be so recorded in such manner as the Authority considers appropriate.

(5) The Authority may, as occasion requires, amend or delete an entry in the register.

(6) The Authority must make the register available for public inspection–

(a) during its office hours; and

(b) on its website.