

2002 No. 3050

POSTAL SERVICES

The Postal Services (EC Directive) Regulations 2002

Made - - - - - *11th December 2002*

Laid before Parliament *11th December 2002*

Coming into force:

Regulation 8 *1st January 2006*

Remainder *1st January 2003*

The Secretary of State for Trade and Industry, being the Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to postal services, in exercise of the powers conferred on her by the said section 2(2) hereby makes the following Regulations:—

Citation, purpose and commencement

1.—(1) These Regulations may be cited as the Postal Services (EC Directive) Regulations 2002.

(2) These Regulations have effect for the purpose of implementing the Directive of the European Parliament and the Council of the European Union of 15th December 1997 (No. 97/67/EC) on common rules for the development of the internal market of Community postal services and the improvement of quality of service(c) as amended by the Directive of the European Parliament and the Council of the European Union of 10th June 2002 (No. 2002/39/EC) with regard to the further opening to competition of Community postal services(d).

(3) In these Regulations “the Act” means the Postal Services Act 2000(e).

(4) Subject to paragraph (5), these Regulations shall come into force on 1st January 2003.

(5) Regulation 8 shall come into force on 1st January 2006.

Amendments to the Postal Services Act 2000

2. In section 6(6) of the Act (provision that a reference to conveying a letter includes a reference to receiving, collecting or delivering a letter), for “and section 7(1)” substitute “or section 7(1) or (1A)”.

3.—(1) Section 7 of the Act(f) (exceptions to restriction on provision of postal services) is amended as follows.

(2) After subsection (1), insert—

(a) S.I. 1998/1750.

(b) 1972 c. 68.

(c) O.J. No. L15, 21.1.98, p. 14.

(d) O.J. No. L176, 5.7.02, p. 21.

(e) 2000 c. 26.

(f) Section 7(2) of the Act has been amended by S.I. 2002/200.

“(1A) Section 6(1) is not contravened by the conveyance of a letter in circumstances where the service of conveying the letter is outside the scope of the universal postal service in the United Kingdom.”.

(3) In subsection (2) of the Act, insert after paragraph (i)—

“(ia) the conveyance and delivery of letters, and the collection of letters for that purpose, by a person who is not a licence holder, who provides those services under a contract for services where the other party to the contract is the sender and who does not provide those services to any person other than the sender”.

4. After section 7 of the Act, insert—

“7A Scope of the universal postal service: meaning

(1) For the purposes of section 7(1A), a postal service is outside the scope of the universal postal service in the United Kingdom if it is not, or is not substantially similar to, a postal service within subsection (2).

(2) A postal service is within this subsection if it is a postal service—

(a) which a postal operator is required to provide in the discharge of any duty to provide a universal postal service, or part of such a service,—

(i) imposed under section 3(2) as a condition of the operator’s licence under Part II, or

(ii) included in his licence as a condition by virtue of section 13(1), or

(b) which a postal operator is required to provide in the discharge of any duty to provide a postal service imposed on him by an order under section 102(2).

(3) For the purposes of subsection (1), a postal service is not to be regarded as being not substantially similar to a postal service within subsection (2) merely because—

(a) the service in question does not comply with section 4(1),

(b) where the person providing the service provides it only to persons within a class specified by him for the purposes of its provision, it is not available to all persons within that class, or

(c) where the service has the characteristic of three day delivery, it also has one or more of the characteristics mentioned in subsection (4).

(4) Those characteristics are that—

(a) the service provides for the collection of a postal packet at a place specified by the sender of the packet,

(b) the service provides for the delivery of a postal packet at or by a time specified by the sender of the packet,

(c) the service provides for the delivery of a postal packet to be recorded, and

(d) the service provides for postage to be chargeable in a form or manner, or to be paid at a time or in a manner, different from that provided for by a postal service within subsection (2).

(5) For the purposes of subsection (3)(c), a postal service has the characteristic of three day delivery if, in all or the majority of cases in which a postal packet is sent by it, it seeks to deliver the packet before the end of the period of three working days beginning with the day after the day on which it is received or collected.”.

5. After section 12 of the Act, insert—

“12A Licences: refusal

Where the Commission determines not to grant a licence (in whole or in part), it shall, as soon as practicable after making that determination, notify the applicant and give him a written statement of its reasons for the determination.”.

6. After section 12A of the Act, insert—

“12B Licences: determination of applications

(1) For the purposes of this section—

“non-reservable service” means a service of conveying letters from one place to another, where each letter has either or both of the following characteristics, namely—

- (a) that it is conveyed in consideration of a payment of not less than 80 pence made by or on behalf of the person for whom it is conveyed, or
 - (b) that it weighs not less than 100 grams;
- “reservable service” means a service of conveying letters from one place to another, where each letter—
- (a) is conveyed in consideration of a payment of less than 80 pence made by or on behalf of the person for whom it is conveyed, and
 - (b) weighs less than 100 grams;

and subsection (6) of section 6 applies as it applies for the purposes of that section.

(2) Where an application for a licence seeks authority for the provision of a reservable service which no person (other than a universal service provider) is authorised by a licence to provide in the manner sought in the application—

- (a) in a case where the application seeks authority for the provision of that service alone, the Commission shall grant a licence if, and only if, it is satisfied that the requirements of subsections (5) and (6) will be met in relation to the licence (if and when it is granted), and
- (b) in any other case, the Commission shall grant a licence so far as the application relates to the provision of that service if, and only if, it is satisfied that (if and when the licence is granted) those requirements will be met in relation to so much of the licence as relates to the provision of that service.

(3) Where an application for a licence seeks authority for the provision of a reservable service which a person (other than a universal service provider) is authorised by a licence to provide in the manner sought in the application—

- (a) in a case where the application seeks authority for the provision of that service alone, the Commission shall grant a licence if, and only if, it is satisfied that the requirements of subsection (5) will be met in relation to the licence (if and when it is granted), and
- (b) in any other case, the Commission shall grant a licence so far as the application relates to the provision of that service if, and only if, it is satisfied that (if and when the licence is granted) those requirements will be met in relation to so much of the licence as relates to the provision of that service.

(4) Where an application for a licence seeks authority for the provision of a non-reservable service, the Commission—

- (a) in a case where the application seeks authority for the provision of that service alone, shall grant a licence if, and only if, it is satisfied that the requirements of subsection (5) will be met in relation to the licence (if and when it is granted), and
- (b) in any other case, shall grant a licence so far as the application relates to the provision of that service if, and only if, it is satisfied that (if and when the licence is granted) those requirements will be met in relation to so much of the licence as relates to the provision of that service.

(5) The requirements of this subsection are—

- (a) that the licence includes provisions designed to safeguard the provision of a universal postal service,
- (b) that the licence includes provisions designed to ensure that the holder complies with such requirements as the Commission considers necessary for the purpose of—
 - (i) safeguarding confidentiality in connection with the sending, conveyance and delivery of letters;
 - (ii) safeguarding security where dangerous goods are transported;
 - (iii) safeguarding the confidentiality of information conveyed;
 - (iv) preserving privacy;
 - (v) protecting the environment;
 - (vi) promoting such policies as the Secretary of State may from time to time have in respect of regional planning and development, and
- (c) that the holder of the licence is in a position to comply with any requirement imposed on him by provision made under paragraph (a) or (b).

(6) The requirement of this subsection is that—

- (a) the grant of the licence, and

(b) the grant to the holder or any other person of any licence of a similar nature, does not endanger the ability of a universal service provider to provide basic postal services.

(7) In subsection (6) “basic postal services”, in relation to a universal service provider, means such postal services as he is required to provide in the discharge of any duty to provide a universal postal service, or part of such a service,—

(a) imposed under section 3(2) as a condition of his licence,

(b) included in his licence as a condition by virtue of section 13(1), or

(c) imposed on him by an order under section 102(2).”.

7. In section 125 of the Act (interpretation), at the end of the definition of “the Postal Services Directive”, add “as amended by the Directive of the European Parliament and the Council of the European Union of 10th June 2002 (No. 2002/39/EC) with regard to the further opening to competition of Community postal services”.

Amendments taking effect from 1st January 2006

8. In section 12B(a) of the Act—

(a) in the definition of “non-reservable service”, for “80 pence” substitute “65 pence”, and for “100 grams” substitute “50 grams”,

(b) in the definition of “reservable service”, for “80 pence” substitute “65 pence”, and for “100 grams” substitute “50 grams”.

Sainsbury of Turville,
Parliamentary Under-Secretary of State for
Science and Innovation,
Department of Trade and Industry

11th December 2002

(a) Section 12B is inserted into the Act by regulation 6 of these Regulations with effect from 1st January 2003.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive 97/67/EC(a) is presently implemented in the United Kingdom by the Postal Services Act 2000(b) (“the Act”) and through provisions in licences granted under it. That Directive has been amended by Directive 2002/39/EC(c). These Regulations make the necessary changes to the Act as a consequence of that amendment and also make minor changes to the way the original Directive is implemented.

Regulation 2 modifies section 6(6) of the Act by extending the provision of this subsection (that the conveyance of a letter includes the incidental services of receiving, collecting and delivering a letter) to the new section 7(1A).

Regulation 3 modifies section 7 of the Act (exemptions from licensing requirements) by inserting a new subsection (1A) inserting a general exemption from the requirement to hold a licence for a postal service that falls outside the scope of the universal postal service in the United Kingdom, as defined in the new section 7A. The regulation also amends section 7(2) of the Act by inserting a specific exemption from the requirement to hold a licence for the conveyance of a letter by a person, where that conveyance is provided under a contract for services entered into between that person and the sender (but only where the person enters into one such contract).

Regulation 4 inserts a new section 7A into the Act, which introduces a definition of the “scope of the universal postal service in the United Kingdom”. That scope is defined as a postal service which is either required to be provided as part of the universal service obligation or is substantially similar to such a service. In determining whether a postal service is substantially similar to a universal service the section provides that certain characteristics are to be disregarded as on their own making the service dissimilar.

Regulation 5 inserts a new section 12A (refusal of licences) into the Act which requires the Commission to provide written reasons as soon as practicable to the applicant for a licence (to provide postal services) where the Commission determines not to grant a licence.

Regulation 6 inserts a new section 12B (determination of applications) into the Act, which requires the Commission to issue licences but only provided certain requirements are satisfied. What these requirements are depends on what postal services are sought to be licensed. Section 12B breaks the licensed area into three zones. The first is a reservable postal service which only a universal service provider can provide. The second is a reservable postal service where a person other than a universal service provider already holds a licence. The third is a non-reservable postal service. Where the licence application relates to the second and third zones the Commission is required to issue a licence if it is satisfied that the licence contains provisions designed to safeguard the provision of a universal service and that the licence contains provisions to ensure the holder complies with certain essential requirements that the Commission think are necessary. Where the licence application relates to the first zone the Commission is also required to be satisfied that the granting of the licence (or a similar licence) will not endanger the ability of a universal service provider to discharge its universal service obligations.

Regulation 7 amends the definition of “Postal Services Directive” in the Act to reflect that Directive 97/67/EC has been amended by Directive 2002/39/EC.

Regulation 8 implements the furthest reduction of the maximum weight and price limits required by Directive 2002/39/EC on 1 January 2006. This reduces the reservable services to 50 grams and 65 pence.

A transposition note setting out how the main elements of the Directive are transposed into law has been placed in the libraries of both Houses of Parliament. Copies are also available from the Business Relations Postal Services Directorate, Department of Trade and Industry, Bay 427, 151 Buckingham Palace Road, London SW1W 9SS.

(a) O.J. No. L15, 21.1.98, p. 14.

(b) 2000 c. 26.

(c) O.J. No. L176, 5.7.02, p. 21.

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