

L. N. 154 of 2014

**POSTAL SERVICES ACT
(CAP. 254)**

Postal Services (General) (Amendment No. 2) Regulations, 2014

IN EXERCISE of the powers conferred by article 81 of the Postal Services Act, the Minister for the Economy, Investment and Small Business, after consultation with the Malta Communications Authority, has made the following regulations:-

Citation and
commencement.

S.L. 254.01

1. (1) The title of these regulations is the Postal Services (General) (Amendment) (No. 2) Regulations, 2014, and these regulations shall be read and construed as one with the Postal Services (General) Regulations, hereinafter referred to as "the principal regulations".

(2) These regulations shall come into force on the 12th May, 2014.

Amends
regulation 2 of
the principal
regulations.

2. In sub-regulation (2) of regulation 2 of the principal regulations, immediately after the definition "postal arrangement" there shall be added the following new definition:

" "Postal Directive" means Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of community postal services;".

Deletes
regulation 7F of
the principal
regulations.

3. Regulation 7F of the principal regulations shall be deleted.

Amends
regulation 8 of
the principal
regulations.

4. In regulation 8 of the principal regulations, for the words "in article 17(5) of the Act." there shall be substituted the words "in article 17(4) of the Act.".

Substitutes
regulation 17 of
the principal
regulations.

5. Regulation 17 of the principal regulations shall be substituted by the following:

"17. When a postal operator is satisfied that a postal article is addressed to a deceased person, it may at its discretion immediately deliver or redirect such postal article upon a legitimate request in writing by -

- (a) the executors named in the will of the addressee, or
- (b) the surviving spouse of the addressee, or
- (c) the heirs of the addressee, or
- (d) the administrator of the estate of the addressee or any other person conducting the affairs of that estate, or
- (e) any other interested person:

Provided that if the postal operator requires any evidence that a person has a legitimate interest to request the delivery or redirection of the postal article in question, then the postal operator concerned shall retain the postal article in question for such a reasonable period as is necessary to enable such person to produce any such evidence. If the required evidence is not provided within such period then the postal articles shall not be retained and shall be dealt with as provided in these regulations:

Provided further that in the case of registered postal articles, such postal articles shall not be retained in terms of this regulation and shall be treated as undeliverable and dealt with as provided in these regulations."

6. Regulation 43A of the principal regulations shall be substituted by the following:

Substitutes regulation 43A of the principal regulations.

"Burden sharing in relation to the provision of universal services.

43A. (1) Where the Authority determines that the universal service obligations entail a net cost calculated taking into account the Second Schedule which represent an unfair financial burden on the universal service provider or providers, the Authority may then introduce:

- (a) a mechanism to compensate the postal operator or operators concerned from public funds:

Provided that such a mechanism may only be established with the prior approval in writing of the Minister granted with the concurrence of the Minister for Finance; and, or

(b) a mechanism for the sharing of the net cost of the universal service obligations between postal operators and, or users:

Provided that in such a case the Authority may establish a compensation fund which may be funded by postal operators and, or the fees paid by users, and which is administered for this purpose by the Authority or a body independent of the beneficiary or beneficiaries under the supervision of the Authority.

(2) The Authority shall notify each postal operator required to share the cost of a universal service obligation of its obligation to contribute to such cost, including the amount, manner and timing of payments to be made.

(3) A postal operator which has been notified of its obligation to contribute an amount specified by the Authority, shall pay that amount in the time and manner specified by the Authority.

(4) The Authority shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of financial contributions referred to in sub-regulation (1)(b):

Provided that decisions taken shall be based on objective and verifiable criteria and that they shall be published."

Amends
regulation 43B
of the principal
regulations.

7. Regulation 43B of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "the Government may consider" there shall be substituted the words "the Authority may consider"; and

(b) sub-regulation (2) thereof shall be substituted by the following:

"(2) Where a universal service provider ceases to provide a universal service in the circumstances referred to

in sub-regulation (1), the Government may, with the prior written approval of the Authority, in order to ensure the continuity of that service, take over that part of the operation of the postal services relating to the provision of the universal service obligation which a universal service provider has ceased to provide, without any obligation to pay compensation to the universal service provider concerned:

Provided that in doing so the Authority, in consultation with Government, where necessary, shall without any undue delay endeavour to find an alternative operator to provide the said universal service in line with the Act:

Provided further that the Government or any person authorised by the Government for the purpose, shall be empowered to use the assets of the universal service provider concerned subject to the payment of such compensation for the said use as may be agreed between the parties, or in default of agreement, as may be determined by the competent Maltese courts or, where all the parties agree, by arbitration according to Maltese law, and to recoup any reasonable costs incurred in providing the said universal service from the defaulting universal service provider."

8. Immediately after regulation 47 of the principal regulations there shall be added the following new regulations:

Adds new regulations 47A to 47C to the principal regulations.

"Conditions applicable on the granting of individual licences.

47A. The granting of an individual licence may:

(a) if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services;

(b) where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanisms as may be established in accordance with the Act and, or with these regulations if the provision of the universal service entails a net cost and represents an unfair burden on the universal service provider or providers as may be designated in accordance with the Act;

(c) where appropriate, be subject to an obligation to make a financial contribution to the operational costs of the Authority;

(d) include the provision to the Authority by the licensee of such information relating to the turnover of postal services that are within the scope of the universal service and any postal services outside this scope;

(e) include such conditions as the Authority may consider to be necessary having regard to its functions at law and, or to the international obligations of Malta; and

(f) in the case of universal service providers only, be made subject to universal service obligations.

Processing and
determination
of an individual
licence.

47B. (1) An application for an individual licence shall be submitted to the Authority, following which the application shall be processed and determined in a timely manner by the Authority which shall, in writing, inform the applicant of its decision to grant or refuse the application within one month from when it receives the application in a complete state and drawn up in a manner that complies with the provisions of the Act and, or these regulations. In the case of a refusal the Authority shall give its reasons:

Provided that such period of one month may be extended by the Authority up to a maximum of another two months where an application requires consultation between the Authority and any other government body or other local or foreign public authority, however so described, with regard to any aspect of the provision of postal services applied for. If the Authority requires such an extension it shall inform the applicant accordingly informing in writing the applicant of the reasons as to why such an extension is required.

(2) The time limits provided for in this regulation shall be without prejudice to any applicable international agreements relating to postal services.

(3) Upon receipt of an application for an individual licence, the Authority shall publicise on its website that such an application has been made, giving such details as it may deem necessary to enable any persons wishing to make representations within such period as the Authority may establish.

(4) The applicant in his application shall provide a clear description of the postal service or services being applied for and shall include with his application any such information as the Authority may require:

Provided that in any case the applicant must provide such information as is sufficient to demonstrate that he fulfils the conditions for the grant of the licence.

(5) Due to overriding reasons of public interest, the absence of a final decision from the Authority within the time periods stated in this regulation shall not be construed to imply the granting of an individual licence applied for:

Provided that the applicant, if he considers the delay to be unjustified and as a result has suffered prejudice, may then appeal in accordance with the provisions of Part VIII of the Malta Communications Authority Act.

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(6) A person authorised in accordance with regulation 46 shall notify the Authority in writing of any changes to the information provided in accordance with sub-regulation (4) within fourteen days of such change.

Grounds for refusal of an application for an individual licence.

47C. The Authority may refuse to grant an application for an individual licence if it considers that the grant of the licence would -

(a) be against the public interest, or be inconsistent with Government policy and the Minister agrees that is the case;

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(b) be inconsistent with the provisions of the Act or of any other law, or with any international commitment undertaken or in the process of being undertaken by Malta;

(c) pose a danger or nuisance to the public or damage to any property, or obstruct or interfere with any lawfully operated postal services;

(d) authorise an applicant when he does not demonstrate to the Authority that he fulfils the conditions for the grant of such a licence;

(e) be given to a person who the Authority has valid grounds to consider as not being a fit and proper person to hold the licence applied for, or would not be in a position because of his financial and, or other specific circumstances, to comply with the provisions of the Act and, or of these regulations or with the licence conditions if granted."

Amends regulation 50 of the principal regulations.

9. Sub-regulation (1) of regulation 50 of the principal regulations shall be substituted by the following:

"(1) The Authority shall establish and maintain a register of those persons who are authorised to provide postal services in accordance with these regulations:

Provided that any information that the Authority considers appropriate, other than information which the Authority reasonably considers to be confidential, shall be entered in the register established and maintained under this sub-regulation."

Adds new regulation 50A to the principal regulations.

10. Immediately after regulation 50 of the principal regulations there shall be added the following new regulation:

"Transferability of authorisation.

50A. (1) No individual licence may be transferred or assigned by the authorised provider to another person without the prior consent in writing of the Authority:

Provided that the Authority shall communicate its decision within one month from when the authorised provider applies in writing for its consent and, in doing so, the Authority shall state its reasons for the decision:

Provided further that where the authorised provider is a body corporate or another body of persons, a change in the control of ownership or management of that body shall be equivalent to the transfer of the individual licence, and shall be subject to the prior consent of the Authority as aforesaid.

(2) The change in the control of the ownership or management of an authorised body corporate or other body of persons enjoying a general authorisation, shall be immediately notified in writing to the Authority."

11. In regulation 65 of the principal regulations, for the words "with article 17(3) of the Act" there shall be substituted the words "with article 17(2) of the Act".

Amends regulation 65 of the principal regulations.

12. The Second Schedule to the principal regulations shall be substituted by the following:

Substitutes the Second Schedule to the principal regulations.

"SECOND SCHEDULE

(Regulation 43A)

Guidance on calculating the net cost, if any, of universal service in accordance with the Postal Directive

Part A: Definition of the universal service obligations

Universal service obligations refer to the obligations, referred to in article 17 of the Act, placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially sighted persons.

These obligations may include, among others, the following:

- a number of days of delivery, superior to those set in this Directive;

- accessibility to access points, in order to satisfy the universal service obligations;
- the tariffs affordability of the universal service;
- uniform prices for universal service;
- the provision of certain free services for blind and partially sighted persons.

Part B: Calculation of net cost

The Authority shall consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently.

The net cost of universal service obligation is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations.

The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.

Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A;
- (ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Authority, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The Authority shall be responsible for verifying the net cost. The universal service provider(s) shall cooperate with the Authority to enable it to verify the net cost.

Part C: Recovery of any net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions. As such compensation involves financial transfers the Authority shall ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result as far as possible in the least distortion to competition and to user demand.

A sharing mechanism based on a fund referred to in regulation 43A of these regulations should use a transparent and neutral mechanism for collecting contributions that avoids a double imposition of contributions falling on both outputs and inputs of undertakings.

The Authority or the independent body administering the fund, as the case may be, is to be responsible for collecting contributions from undertakings, which are assessed as liable to contribute to the net cost of universal service obligations and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund."

