

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3969 of 13 December, 2012

LEGAL NOTICE NO. 218 OF 2012.

POST OFFICE ACT

POST OFFICE ACT (AMENDMENT) REGULATIONS 2012

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, as amended by Directive 2002/39/EC, Regulation (EC) No 1882/2003 and Directive 2008/6/EC, the Government has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Post Office Act (Amendment) Regulations 2012 and come into operation on the day of publication.

Amendments to section 2.

2. The Post Office Act (the Principal Act) is amended in section 2–

(a) by substituting the following subsection for subsection (1)–

“(1) In this Act, unless the context otherwise requires–

“access points” means physical facilities, including letter boxes, provided for the public either–

(a) on the public highway; or

(b) at the premises of the postal service provider,

where postal items may be deposited with the postal network by senders;

“authorisation” means any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services which may include the permission to establish or to operate their networks for the provision of such services, in the form of a general authorisation or individual licence;

“Authority” means the Gibraltar Regulatory Authority established under section 3(1) of the Gibraltar Regulatory Authority Act 2000;

“clearance” means the operation of collecting postal items by a postal service provider;

“commander”, in relation to an aircraft, includes the pilot or other person in charge of the aircraft;

“Commission” means the European Commission;

“cross-border mail” means mail from or to a Member State or from or to a third country;

“customs duty” means any sum payable in relation to the import or export of anything into or from Gibraltar;

“Directive” means Directive 97/67/EC of the European Parliament and the Council of the European Union of 15 December 1997 on common rules for the development of the internal market of Community postal services and the implementation of quality of service, as the same may be amended from time to time;

“distribution” means the process from sorting at the distribution centre to delivery of postal items to their addressees or by way of derogation in accordance with section 4A(3)(b)(ii), under conditions at the discretion of the Authority, one delivery to appropriate installations;

“essential requirements” means conditions that may be imposed by the Authority or the Minister on the supply of postal services on the basis of the following non-economic reasons—

- (a) the confidentiality of correspondence;
- (b) the security of the network as regards the transport of dangerous goods;

- (c) respect for the terms and conditions of employment or social security schemes, laid down by law or by collective agreement negotiated between social partners; and
- (d) where justified, data protection (including personal data protection, the confidentiality of information transmitted or stored and protection of privacy), environmental protection and town-planning considerations;

“foreign”, in relation to any postal packet, means either posted in Gibraltar and sent to a place outside Gibraltar, or posted in a place outside Gibraltar and sent to a place within Gibraltar, or in transit through Gibraltar to a place outside Gibraltar;

“general authorisation” means an authorisation, regardless of whether it is regulated by a class licence or under general law and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal service provider concerned to obtain an explicit decision by the Authority before exercising the rights stemming from the authorisation;

“individual licence” means an authorisation which is granted by the Authority and which gives a postal service provider specific rights, or which subjects that undertaking’s operations to specific obligations supplementing the general authorisation where applicable, where the postal service provider is not entitled to exercise the rights concerned until it has received the decision by the Authority;

“insured item” means a service insuring the postal item up to the value declared by the sender in the event of loss, theft or damage;

“item of correspondence” means a communication in written form on any kind of physical medium other than books, catalogues, newspapers and periodicals, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping;

“local”, in relation to any postal packet or any description thereof, means posted within Gibraltar and addressed to some place in Gibraltar,

and “local postage” means the postage chargeable on a local postal packet;

“mail” includes every conveyance by which postal packets are carried, whether it be a ship, aircraft, vehicle or any other conveyance, and also a person employed in conveying or delivering postal packets;

“mail bag” includes a parcel, an envelope and any form of container or covering in which postal packets in course of transmission by post are conveyed, whether or not it contains any such packets;

“master”, in relation to a ship, includes every person (except a pilot) having command or charge of the ship, whether the ship is a ship of war or other ship;

“Minister” means the Minister with responsibility for postal services;

“officer of a postal service provider” includes any director, employee or agent of the postal service provider;

“parcel” means any postal packet which contains any item, other than a letter, irrespective of whether the item is of commercial value or not;

“post office” includes any house, building, room, vehicle or place used for the purposes of providing postal services, and any post office letter box;

“post office letter box” includes any pillar box, wall box, or other box or receptacle provided by the permission or under the authority of the Minister for the purpose of receiving postal items, or any class of postal packets of appropriate size, for transmission by or under the authority of the universal service provider;

“postage” means the duty chargeable for the transmission of postal packets;

“postal item” means an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;

“postal network” means the system of organisation and resources of all kinds used by the universal service provider for the purposes in particular of—

- (a) the clearance of postal items covered by a universal service obligation from access points throughout Gibraltar;
- (b) the routing and handling of those items from the postal network access point to the distribution centre; and
- (c) distribution to the addresses shown on items;

“postal packet” means a letter, postcard, reply postcard, newspaper, printed packet, sample packet, or parcel, and every packet or article transmissible by post;

“postal services” means services involving the collection, clearance, sorting, transport and distribution of postal items;

“postal service provider” means an undertaking providing one or more postal services;

“public service vehicle”, in relation to Gibraltar, means a public service vehicle within the meaning of the Traffic Act 2005;

“purposes of the postal service provider” includes any purpose relating to or in connection with the execution of any duties for the time being undertaken by a postal service provider or any of its officers;

“registered item” means a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of either or both the handing in of the postal item or of its delivery to the addressee;

“regulations” means regulations made under this Act;

“Royal Gibraltar Post Office” means the Government entity which, amongst other things, is engaged in providing postal services;

“Scheme” means a set of terms and conditions applicable to a postal service provider which is issued by it with the approval of the Authority in compliance with the relevant authorisation and

published in the website of the postal service provider or in any other form;

“sender” means a natural or legal person responsible for originating postal items;

“services provided at single piece tariff” means postal services for which the tariff is set in the general terms and conditions of universal service providers for individual postal items;

“ship” includes any boat or vessel whatsoever;

“terminal dues” means the remuneration of postal service providers for the distribution of incoming cross-border mail comprising postal items from outside Gibraltar, and in relation to outgoing Gibraltar mail the payment to the respective entities who are commissioned to deliver the mail in the respective countries to which the outgoing Gibraltar mail is destined to;

“universal service provider” means the public or private postal service provider providing a universal postal service or parts thereof within Gibraltar, the identity of which has been notified to the Commission in accordance with section 4C;

“user” means any natural or legal person benefiting from postal service provision as a sender or an addressee;

“valuable security” means any document—

- (a) creating, transferring, surrendering or releasing any right to, in or over property;
- (b) authorising the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.”.

Substitution of Part I.

3. The Principal Act is amended by substituting the following Part for Part I—

“PART I- POSTAL SERVICES

Designation and tasks of the regulatory authority.

3.(1) For the postal sector in Gibraltar, the Gibraltar Regulatory Authority (Authority) is designated as the competent authority to carry out the functions and duties assigned or conferred on it by this Act or any regulations made hereunder.

(2) The Minister shall ensure that the Commission is informed of the designation under subsection (1).

(3) The tasks referred to in subsection (4) shall be published by the Authority in a form which is easily accessible by the public.

(4) The Authority shall have as a particular task ensuring compliance with—

(a) obligations arising from this Act in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service; and

(b) competition rules in the postal sector.

(5) Subject to the provisions of this Act, the Authority may do anything that appears to it to be incidental or conducive to the carrying out of its functions and duties under this Act.

Provision of information.

4.(1) The Authority may request information from postal service providers, in particular financial information and information concerning the provision of the universal service—

(a) to ensure conformity by postal service providers with the provisions of, or decisions made in accordance with, this Act; and

- (b) for such statistical purposes as the Authority shall clearly define.

(2) Any information requested by the Authority under subsection (1) shall be proportionate to the performance of its functions and duties and the Authority shall give the reasons justifying its request for information.

(3) Postal service providers shall provide the information referred to in subsection (1) promptly on request in confidence and, where necessary, within the time scales and to the level of detail required by the Authority.

(4) The Authority shall provide the Commission, upon request, with appropriate and relevant information necessary for the Commission to carry out its tasks under the Directive.

(5) Where information is considered confidential by the Authority, every person in receipt of the information, including the Authority, shall preserve such confidentiality.

Provision of universal service.

4A.(1) The Authority shall ensure that every user has the right to a universal service involving the permanent provision of a postal service of specified quality at all points in Gibraltar at affordable prices for all users.

(2) The Authority shall, to this end, take whatever steps are necessary to ensure that the density of the points of contact and of the access points take account of the needs of users.

(3) The Authority shall take whatever steps are necessary to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum—

- (a) one clearance; and
- (b) one delivery—
 - (i) to the home or premises of every natural or legal person, or

- (ii) by way of derogation, under conditions at the discretion of the Authority, one delivery to appropriate installations.

(4) If any derogation referred to in subsection (3)(b)(ii) is granted by the Authority, it must be communicated to the Commission.

(5) The Authority shall ensure that a universal service shall include as a minimum the following requirements—

- (a) the clearance, sorting, transport and distribution of postal items up to two kilograms;
- (b) the clearance, sorting, transport and distribution of postal packages up to 10 kilograms; and
- (c) the provision of services for registered and insured items.

(6) The Authority may—

- (a) increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms; and
- (b) authorise special arrangements for the door-to-door delivery of such parcels.

(7) Notwithstanding the weight limits set pursuant to subsections (5)(b) or (6)(a) the Authority shall ensure that posted parcels received from a Member State weighing up to 20 kilogrammes are delivered in Gibraltar.

(8) The minimum and maximum dimensions for the postal items in question shall be those required by the Authority pursuant to the relevant provisions adopted, from time to time, by the Universal Postal Union.

(9) The universal service within the meaning of this Part shall cover both local and cross-border mail.

Guarantee of Universal Service.

4B.(1) The Authority shall ensure that—

- (a) the provision of the universal service is guaranteed; and

- (b) the Commission is notified of the steps it has taken to fulfil this obligation.

(2) The Authority may designate—

- (a) one or more undertakings as universal service providers in order that the whole of Gibraltar is covered; or
- (b) different undertakings to provide different elements of universal service or to cover different parts of Gibraltar or to both,

and where the designation is made under paragraph (b) the Authority shall determine, in accordance with European Union law, the obligations and rights assigned to them and shall publish such obligations and rights as it deems fit.

(3) The Authority shall take such measures as it considers necessary to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality so as to guarantee the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion.

(4) The Authority shall notify the Commission of the identity of the universal service provider it has designated.

(5) The designation of a universal service provider shall be subject to a periodic review and be examined against the conditions and principles set out in this section.

(6) The Authority shall ensure that the duration of the designation under this section provides a sufficient period for return on investments.

Requirements for Universal Service.

4C.(1) The Authority shall include the following conditions in any individual licence for the provision of a universal service—

- (a) the universal service shall offer—
 - (i) a service guaranteeing compliance with the essential requirements, and

- (ii) an identical service to users under comparable conditions;
- (b) the universal service shall—
 - (i) be made available without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations,
 - (ii) not be interrupted or stopped except in cases of force majeure, and
 - (iii) evolve in response to the technical, economic and social environment and the needs of users.

(2) Nothing in subsection (1) shall prejudice the right of the Government to take such measures in the public interest as it may deem necessary in accordance with European Union law.

(3) For the purposes of subsection (2), “public interest” includes public morality, public security, criminal investigations and public policy.

Provision of information to users.

4D.(1) It shall be a condition of any authorisation under this Part for the provision of a universal service, that users are regularly given sufficiently detailed and up-to-date information by the universal service provider regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels.

(2) The information referred to in subsection (1) shall be published in such manner as the Authority may, from time to time, require.

(3) The Authority shall ensure the Commission is notified of the manner in which the information in subsection (1) is published.

(4) Universal service providers shall refer to the standards published from time to time in the Official Journal of the European Union in supplying the information referred to in subsection (1) and where necessary in the interests of users.

Financing of universal services.

4E.(1) There shall not be any exclusive or special rights for the establishment and provision of postal services in Gibraltar.

(2) The provision of universal services may be financed in accordance with one or more of the means provided for in this section, or in accordance with any other means compatible with the requirements of European Union law.

(3) The provision of universal services may be procured in accordance with the provisions of the Procurement (Utilities Contract) Regulations 2012.

(4) Where the Minister, after consulting with the Authority, determines that universal service obligations, as provided for in this Part, entail a net cost calculated taking into account the provisions of Schedule 1 and therefore represent an unfair financial burden on universal service providers, the Minister may do either or both of the following—

- (a) compensate the undertaking concerned from public funds;
- (b) make provision by Regulations for a mechanism for the sharing of the net cost of the universal service obligations between providers of services or users.

(5) Regulations made under subsection (4)(b)—

- (a) may provide for the establishment, operation and other matters incidental to the establishment of a compensation fund, funded by service providers' fees, users' fees or fees from both service providers and users, and administered for these purpose by the Authority; and
- (b) may make the granting of authorisations to service providers under this Part, subject to an obligation to make a financial contribution to the fund referred to in paragraph (a) or to comply with universal service obligations.

(6) The universal service obligations of the universal service provider under section 4A may be financed in the manner set out in this section.

(7) The Minister and the Authority shall ensure—

- (a) that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of cost sharing under subsection (4)(b) and of the financial contributions referred to in subsection (5); and
 - (b) that any decision taken under subsection (4), (5) or (6) is based on objective and verifiable criteria, and made public.
- (8) Nothing in this section shall prejudice the Minister's right to—
- (a) provide for the siting of letter boxes on the public highway;
 - (b) issue postage stamps; or
 - (c) make Regulations for the provision of a registered mail service used in the course of judicial or administrative procedures.

Conditions Governing the Provision of Postal Services and Access to the Network.

4F.(1) No person shall provide a universal service without an individual licence issued by the Authority.

(2) No person shall provide a postal service outside the scope of the universal service without complying with the essential requirements and conditions of general authorisation issued from time to time by the Authority pursuant to section 4H(1).

(3) An authorisation to operate or provide postal services may be obtained from the Authority—

- (a) by individual licence granted in respect of a universal service to the extent necessary in order to guarantee compliance with essential requirements and to safeguard the universal service; and
- (b) by general authorisation in respect of services which are outside the scope of the universal services to the extent necessary to guarantee compliance with the essential requirements.

(4) The granting of authorisations by the Authority may—

- (a) be subject to universal service obligations;
 - (b) where necessary and justified, be subject to such requirements concerning the quality, availability and performance of the relevant services as it may see fit to impose;
 - (c) where appropriate, be subject to such obligation to make a financial contribution to the sharing mechanisms referred to in section 4E(5)(b) as the Authority may determine, if the provision of the universal service entails a net cost and represents an unfair burden on the universal service providers designated in accordance with section 4B;
 - (d) where appropriate, be subject to an obligation to make a financial contribution to the Authority's operational costs arising pursuant to this Act; and
 - (e) where necessary and justified, be subject to an obligation to respect the conditions of employment under the Employment Act or any other enactment relating to working conditions.
- (5) Requirements referred to in subsection (4)(a) and in section 4A may only be imposed on designated universal service providers.
- (6) Except in the case of undertakings that have been designated as universal service providers in accordance with section 4B, authorisations granted under this Part may not—
- (a) be limited in number;
 - (b) for the same elements of the universal service or parts of Gibraltar, impose universal service obligations and, at the same time, financial contributions to a sharing mechanism;
 - (c) duplicate conditions which are applicable to undertakings by virtue of other, non-sector-specific legislation; or
 - (d) impose technical or operational conditions other than those necessary to fulfil the obligations of this Part.
- (7) The Authority shall ensure that—

- (a) procedures, obligations and requirements referred to in this section are transparent, accessible, non-discriminatory, proportionate, precise, unambiguous, made public in advance and based on objective criteria; and
- (b) the reasons for refusing or withdrawing an authorisation in whole or in part under this section are communicated to the person concerned.

(8) Whenever necessary to achieve either or both of the following objectives, namely–

- (a) the protection of the interests of users;
- (b) the promotion of effective competition,

and, having regard to the conditions prevailing in Gibraltar, the Authority shall ensure that transparent, proportional and non-discriminatory access conditions are available to all elements of postal infrastructure or services provided within the scope of the universal service, such as–

- (i) a postcode system;
- (ii) an address database;
- (iii) post office letter boxes;
- (iv) delivery boxes;
- (v) information on change of address; and
- (vi) re-direction and return to sender services.

(9) Subsection (8) shall be without prejudice to the right of the Minister to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

Procedure for individual licences.

4G.(1) Any person seeking an authorisation by means of an individual licence shall apply to the Authority on such form and in such manner as may be required by the Authority, and shall provide to the Authority all such

information as the Authority may require to enable it to assess the application.

(2) The application shall, in particular, specify the postal service for which it is made and shall include such information as is sufficient to demonstrate that the applicant fulfils the conditions for the grant of the licence.

(3) Upon receipt of an application, the Authority shall cause the fact that an application has been made, to be published in the Gazette, giving such details as it may deem appropriate to enable any person to make representations about the application.

(4) The Authority shall consider the application after conducting the necessary investigations and considering any representations made in respect thereof, and may for this purpose require from any person any further information it may deem necessary.

(5) The Authority shall complete its investigations within a reasonable time and shall thereupon decide whether or not to grant the licence applied for.

(6) If the Authority decides that a licence is to be granted, the Authority shall approve the application and grant the individual licence in such form as it may prescribe.

(7) The Authority may refuse to grant an individual licence to a person to operate a universal service, if it is of the opinion that the grant of the licence would—

- (a) be against the public interest, or is inconsistent with Government policy;
- (b) be inconsistent with the provisions of this Act or of any other law;
- (c) pose a danger or nuisance to the public or cause damage to any property; or
- (d) authorise an applicant applying for an individual licence, when he does not demonstrate to the Authority that he fulfils the conditions for the grant of such a licence.

(8) The Authority may also refuse to grant the licence applied for if it has grounds to believe that the applicant is not a fit and proper person to hold the licence applied for, or is not in a position, because of the financial and other specific circumstances of the applicant, to comply with the provisions of this Act or of any regulations made thereunder or with the conditions of the licence if granted.

(9) The Authority shall—

- (a) inform the applicant of its decision to grant or refuse a licence within 12 weeks from the date when it receives the application;
- (b) communicate in writing to the applicant the decision to refuse an application; and
- (c) set out briefly in writing the reasons for a decision to refuse an application.

(10) Where the beneficiary of an individual licence does not comply with a condition attached to the licence, the Authority may withdraw, amend or suspend the individual licence or impose such measures as it may consider appropriate to ensure compliance.

(11) The Authority shall at the same time give the beneficiary concerned a reasonable opportunity to state his views on the application of the condition and to remedy any breaches within one month commencing from the date of the intervention of the Authority, save that in the case of repeated breaches, the Authority may require the beneficiary to immediately take appropriate measures.

(12) If the beneficiary concerned remedies the breaches, the Authority shall, within two months from its initial intervention, revoke or modify its decision as it deems appropriate and it shall give the reasons for its decision.

(13) If the beneficiary concerned does not remedy the breaches the Authority shall, within two months from its initial intervention, confirm its decision and give the reasons for its decision. The decision shall be communicated within one week of its adoption to the beneficiary concerned.

Procedure for general authorisation.

4H.(1) In order to obtain a general authorisation, the postal service provider shall—

- (a) notify in writing his intention to the Authority that he will comply with the essential requirements and conditions published in the Authority's website which, on request, will be made available in both soft and hard copies on payment of cost as the Authority may prescribe; and
- (b) follow any other procedure as may be prescribed by Regulations by the Minister.

(2) Upon notifying the intention referred to in subsection (1), the postal service provider may start providing services outside the scope of the universal service without any express permission from the Authority, subject to such requirements, conditions and procedure as may be prescribed by Regulations by the Minister.

(3) Where a person enjoying a general authorisation does not comply with the essential requirements, any condition published in the Authority's website or any requirements, conditions and procedure as may be prescribed by Regulations by the Minister with regard to a general authorisation, the Authority may cause initial intervention by—

- (a) informing its decision to that person that he is not entitled to avail himself of the general authorisation; and
- (b) imposing on that person such measures as may be necessary to ensure compliance by him with the conditions of the general authorisation.

(4) The Authority shall at the same time give the person referred to in subsection (3) a reasonable opportunity to—

- (a) state his views on the application of the conditions; and
- (b) remedy any breaches within one month from the intervention of the Authority.

(5) If the person referred to in subsection (3)—

- (a) remedies the breaches to the satisfaction of the Authority, the Authority shall, within two months of its initial intervention, revoke or modify its decision as it may consider appropriate and it shall give the reasons for its decision;
- (b) does not remedy the breaches, the Authority shall, within two months of its initial intervention, confirm the decision by giving reasons for it.

(6) Where the Authority revokes the decision under subsection (5)(a), the general authorisation to operate or provide a postal service outside the scope of the universal service shall continue to be in force in favour of the person referred to in subsection (3).

(7) Where the Authority modifies the decision under subsection (5)(a), the general authorisation to operate or provide a postal service outside the scope of the universal service shall continue to be in force in favour of the person referred to in subsection (3) subject to such modification.

(8) Where the Authority confirms the decision under subsection (5)(b), it shall communicate that decision, within one week of its confirmation, to the person referred to in subsection (3) upon which the right of that person to provide the service in question under the provisions of the general authorisation shall cease forthwith until he satisfies the Authority that conditions have been met.

Right of appeal.

4I.(1) A person aggrieved by a decision of the Authority or the Minister under this Act may appeal against that decision on any one or more of the following grounds—

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that a material error of law has been made;
- (d) that there was some other material illegality.

(2) An appeal of the nature referred to in subsection (1) lies to the Supreme Court.

- (3) The Supreme Court in determining an appeal under this section may-
- (a) dismiss the appeal; or
 - (b) quash the decision and refer the matter to the Minister or the Authority, as the case may be, with a direction to reconsider it and adopt a decision in accordance with the findings of the Supreme Court.
- (4) No appeal under this section shall be brought unless the leave of the Supreme Court has been obtained in accordance with-
- (a) Part IV of the Supreme Court Rules 2000; or
 - (b) such Rules as may be made under paragraph (a) of subsection (10).
- (5) An appeal under this section shall be brought as soon as reasonably practicable and in any event not later than three weeks from the date on which the Minister or the Authority, as the case may be, adopted the decision or within such other period as may be specified in such Rules as may be made under paragraph (b) of subsection (10).
- (6) The bringing of an appeal under this section shall not operate to suspend the effect of the decision appealed against unless the Supreme Court grants interim measures.
- (7) Except as provided by this section, the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.
- (8) If by reason of any default on the part of the person who has instituted an appeal in accordance with this section, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted, the Minister or the Authority, as the case may be, may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this section, to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Supreme Court may dismiss the appeal or make such other order as it considers just.

(9) A decision of the Supreme Court under this section shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.

(10) The Chief Justice may make Rules prescribing any one or more of the following—

- (a) a procedure for obtaining the leave referred to in subsection (4);
- (b) the other period referred to in subsection (5);
- (c) the court fees payable in making an appeal of the nature referred to in subsection (1);
- (d) the forms and the procedure for such appeals.

Tariff principles.

4J.(1) Tariffs for each of the services forming part of the universal service shall comply with the following principles—

- (a) prices shall be affordable and must be such that all users, independent of geographical location and, in the light of Gibraltar's specific conditions, have access to the services provided;
- (b) prices shall be cost-oriented and give incentives for an efficient universal service provision;
- (c) the Minister may decide for reasons relating to the public interest that a uniform tariff shall be applied, throughout Gibraltar or cross-border or both, to services provided at single piece tariff and to other postal items;
- (d) the application of a uniform tariff shall not exclude the right of the universal service provider to conclude individual agreements on prices with users; and
- (e) tariffs shall be transparent and non-discriminatory.

(2) Tariffs set pursuant to this Part may make provision for the introduction or the maintenance of a free postal service for the use of blind or partially-sighted persons.

(3) Whenever universal service providers apply special tariffs for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions.

(4) The tariffs under subsection (3), together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services.

(5) Every tariff imposed under subsection (2) shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.

Terminal dues: principles.

4K.(1) The Authority shall, in order to ensure the cross-border provision of the universal service, encourage universal service providers to arrange that—

- (a) in their agreements on terminal dues for intra-European Union cross-border mail; or
- (b) foreign mail generally,

the following principles are respected—

- (i) terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,
- (ii) levels of remuneration shall be related to the quality of service achieved, and
- (iii) terminal dues shall be transparent and non-discriminatory.

(2) The Authority, on the instructions of the Minister, may arrange for the implementation of the principles in subsection (1) in a manner designed to avoid undue disruption on postal markets or unfavourable implications for economic operators, if—

- (a) there is agreement between the operators of origin and receipt; and
- (b) that the arrangements are restricted to the minimum required to achieve these objectives.

Accounting principles.

4L.(1) The accounting procedures of universal service providers shall be conducted in accordance with the provisions of this section.

(2) The universal service providers shall—

- (a) keep separate accounts within their internal accounting systems in order to clearly distinguish between each of the services and products which are part of the universal service and those which are not;
- (b) operate such internal accounting systems on the basis of consistently applied and objectively justifiable cost accounting principles.

(3) The accounting separation set out in subsection (2) shall be used as an input when the Authority calculates the net cost of the universal service.

(4) The accounting system referred to in subsection (2) shall, without prejudice to subsection (5), allocate costs in the following manner—

- (a) costs which can be directly assigned to a particular service or product shall be so assigned;
- (b) common costs, that is, costs which cannot be directly assigned to a particular service or product, shall be allocated as follows—
 - (i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of

cost categories for which a direct assignment or allocation is possible and the indirect linkage shall be based on comparable cost structures;

- (iii) when neither direct or indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services; and
- (iv) common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately and the same cost drivers must be applied to both universal services and non-universal services.

(5) Other cost accounting systems may be applied only if–

- (a) they are compatible with subsection (2) and have been approved by the Authority; and
- (b) the Commission is informed prior to their application.

(6) The Authority shall ensure that–

- (a) compliance with one of the cost accounting systems described in subsection (4) or (5) is verified, at the expense of the universal service provider, by a competent body which is independent of the universal service provider; and
- (b) a statement concerning compliance is published periodically in such manner as it may, from time to time, require.

(7) The Authority shall–

- (a) keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal service provider; and
- (b) ensure such information is submitted to the Commission on request.

(8) On request, any person holding detailed accounting information arising from such accounting systems shall make the information available in confidence to the Authority and to the Commission.

(9) Where—

- (a) a financing mechanism for the provision of the universal service, as permitted under section 4E, has not been used;
- (b) the Authority is satisfied that none of the designated universal service providers is in receipt of assistance from the Government, whether hidden or otherwise; and
- (c) competition in the market is fully effective,

the Authority may decide not to apply the requirements of this section.

(10) Postal service providers which are obliged under the provisions of this Part to contribute to a compensation fund shall introduce a system ensuring accounting separation approved by the Authority to ensure the functioning of the fund.

Audit requirements.

4M. The financial accounts of all universal service providers shall be drawn up, submitted to audit by an independent auditor and published in accordance with the relevant European Union and Gibraltar laws relating to commercial undertakings.

Quality of Service Standards.

4N.(1) The Authority shall ensure that quality-of-service standards are set and published in relation to universal service in order to guarantee a postal service of good quality.

(2) The quality-of-service standards for intra-European Union cross-border mail shall be those established by the European Parliament and the Council and set out in Annex II to the Directive, as set out in Schedule 2 for information purposes.

(3) Quality standards shall focus, in particular, on routing times and on the regularity and reliability of services.

- (4) Independent performance monitoring shall be—
- (a) carried out at least once a year by external bodies having no links with the universal service providers under standardised conditions; and
 - (b) the subject of reports published at least once a year.

Service Standards – Gibraltar mail services.

4O.(1) After consultation with the Minister in respect of universal service providers' obligations, the Authority shall—

- (a) lay down quality standards for Gibraltar mail services; and
 - (b) ensure that those standards are compatible with those laid down for intra-European Union cross-border services.
- (2) The Authority shall ensure that the Commission is notified of the quality standards for Gibraltar mail services referred to in subsection (1).
- (3) The Authority shall ensure that independent performance monitoring is carried out in accordance with section 4N(4), that the results are justified, and that corrective action is taken where necessary.
- (4) Where exceptional situations relating to infrastructure or geography so require, the Authority may determine exemptions from the quality standards provided for in Schedule 2, and in such case it shall ensure that the Commission is notified forthwith.

Dispute resolution.

4P.(1) Without prejudice to any international obligations relating to compensation schemes and without prejudice to postal users' rights arising otherwise than by this section, transparent, simple and inexpensive procedures shall be made available by all postal service providers for dealing with postal users' complaints, particularly—

- (a) in cases involving loss, theft, damage or non-compliance with service quality standards; and

- (b) procedures for determining where responsibility lies in cases where more than one operator in Gibraltar or elsewhere is involved.

(2) It shall be a condition subject to which an authorisation under this Part is granted that the procedures referred to in subsection (1) enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement, compensation or both.

(3) The Authority—

- (a) may establish a complaints procedure which shall be published on its website; and
- (b) shall encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.

(4) Without prejudice to any right of appeal or other means of redress where a user's complaint to an undertaking providing postal services within the scope of the authorisation has not been satisfactorily resolved, the user may file a complaint with the Authority.

(5) Where a complaint is brought to the Authority pursuant to subsection (4), the Authority shall have the power to request from the relevant postal service provider such information and records as the Authority may deem appropriate to enable it to consider the complaint.

(6) In considering a complaint under this section, the Authority may issue a direction to require the postal service provider concerned to—

- (a) amend its operational procedure;
- (b) pay the complainant such level of reimbursement, compensation or both, as it may deem fair and reasonable; or
- (c) do both as referred to in paragraphs (a) and (b).

(7) It shall be a condition subject to which an authorisation under this Part is granted that postal service providers comply with any requirements issued by the Authority pursuant to subsections (4) to (6), and any such postal service providers shall have a single right of appeal on a point of law from any decision of the Authority to the Supreme Court.

(8) For the purposes of section 4N, universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, shall publish in such manner as the Authority may require, an annual report on the monitoring of their performance, together with information on the number of complaints and the manner in which they have been dealt with.

Offences and penalties.

4Q.(1) A person who contravenes subsection (1) or (2) of section 4F, commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who—

- (a) continues to operate or provide a universal service after his individual licence has been withdrawn under section 4G(11);
- (b) acts against a decision or measures imposed by the Authority under section 4H(3); or
- (c) continues to operate or provide the postal service after his rights under the general authorisation have been removed under section 4H(8),

commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person who is convicted of an offence under this section shall, where the offence continues after the conviction—

- (a) be deemed to commit a separate offence in respect of every day on which the offence so continues; and
- (b) be liable on summary conviction to a fine not exceeding level 4 on the standard scale for each such day.

Directions by the Authority.

4R.(1) The Authority may issue directions to any person who is subject to the provisions of this Act, whether individually or generally, requiring that person to do or refrain from doing anything which the Authority may

consider necessary for that person to comply with any provision of, or any condition, obligation or other requirement applicable to that person under this Act and that person shall give effect to any such direction.

(2) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a direction issued under subsection (1) commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Regulations under this Part.

4S.(1) The Minister may, by Regulations, do anything he is empowered to do and prescribe anything requiring to be prescribed pursuant to the provisions of this Part.

(2) Without prejudice to the generality of subsection (1) the Minister may, by Regulations—

- (a) provide for the procedure for applications for authorisations, fees and forms as he may deem appropriate in order to make better provision for the execution of this Part; and
- (b) make such provision as he deems appropriate in cases where a condition imposed under sections 4C and 4F has been breached, including penalties, withdrawal or suspension of the right to offer a postal service or other sanctions.

(3) Without prejudice to the generality of subsection (1), the Minister shall, by Regulations and in consultation with the Authority, establish monitoring and regulatory procedures to ensure the provision of a universal service.

(4) Regulations made under subsection (2)(b) shall make such provision for fines, penalties, offences and powers of search and seizure as the Minister may deem appropriate.

(5) The Minister may make Regulations for the purposes of giving effect to or implementing any European Union or other international obligation.”.

Substitution of section 5.

4. The Principal Act is amended by substituting the following section for section 5–

“Postage to be charged on postal packets.

5.(1) Subject to the provisions of this Act, in particular section 4J, and any other law, there shall be charged by the postal service provider in respect of postal packets which are conveyed or delivered for conveyance by post under an authorisation from the Authority such postage and other sums as may be prescribed by a Scheme issued and published by that postal service provider.

(2) The Scheme referred to in subsection (1) may, subject to the provisions of section 4J–

- (a) fix or provide for the determination of the rates of postage and the other sums, if any, to be charged in respect of postal packets and postal facilities under this Act;
- (b) make provision as to the scale of weights and the circumstances according to which those rates and sums are to be charged;
- (c) confer upon the postal service provider power, with or without the consent of the Authority, to remit in whole or in part any postage or other sums chargeable in such cases or classes of cases as he may determine.”.

Substitution of section 6.

5. The Principal Act is amended by substituting the following section for section 6–

“General provisions relating to postage, etc.

6.(1) The manufacture, sale and issue of Gibraltar postage stamps which bear the Royal Cipher or effigy of Her Majesty the

Queen or a previous reigning monarch is the exclusive privilege of the Royal Gibraltar Post Office.

- (2) The Royal Gibraltar Post Office may stamp any paper sent to it for the purpose of being stamped as covers or envelopes of postal packets with its stamps denoting the appropriate postage on payment of the amount of the stamps required to be impressed.
- (3) The Royal Gibraltar Post Office may make repayments or give other of its stamps in return for any spoiled, unused or misused Gibraltar stamps issued by it either of a value equal to the face value thereof, or, if it thinks fit, of any less value.
- (4) The marks used by the Royal Gibraltar Post Office for the purpose of cancelling stamps used for the payment of postage on postal packets may consist of such words or devices as it may in its discretion think proper, including words or devices constituting advertisements in respect of the use of which as postmarks payment is made by any persons to the Royal Gibraltar Post Office.”.

Amendments to section 7.

6. Section 7 of the Principal Act is amended—

- (a) in the proviso to subsection (1) by substituting “the Scheme” for “regulations” on both occasions it appears;
- (b) in subsection (2)—
 - (i) by substituting “postal service provider” for “Director” on both occasions it appears; and
 - (ii) by deleting “and subject to regulations”.

Amendments to section 8.

7. Section 8 of the Principal Act is amended—

- (a) in subsection (1) by substituting “The postal service provider may issue and publish Schemes which may include” for “Regulations may make provision as to”;

- (b) in subsection (1)(a) by deleting “under this Act”;
- (c) by deleting paragraph (c) of subsection (1);
- (d) in subsection (1)(d) by deleting “stamps and”;
- (e) by deleting paragraph (m) of subsection (1);
- (f) in the tailpiece of subsection (1) by substituting “Schemes” for “regulations”;
- (g) in subsection (2) by inserting—
 - (i) after “delivery of a postal packet” the words “by the Royal Gibraltar Post Office.”; and
 - (ii) after “the contents thereof” the words “beyond the requirements of the relevant Scheme”;
- (h) in subsection (3)—
 - (i) by inserting after “any regulation made thereunder” the words “ or any Scheme”;
 - (ii) by inserting after “be detained and opened” the words “by the relevant postal service provider”; and
 - (iii) by substituting “or dealt with as the Authority may direct” for “as the Director may direct”; and
- (i) by inserting the following subsection after subsection (3)—

“(3A) Any Regulations made under this Act may make special conditions in respect of the transmission by post of postal packets consisting of books or paper (including letters to or from blind persons) impressed or otherwise prepared for the use of the blind, or of papers posted to any person for the purpose of being so impressed or prepared, or of any article specially adapted for the use of the blind.”.

Amendment to section 9.

8. Section 9 of the Principal Act is amended by substituting “Authority” for “Director”.

Amendments to section 10.

9. Section 10 of the Principal Act is amended—

- (a) by substituting “ A postal service provider” for “ The Director” on each occasion that word appears in subsections (1), (2), (3) and (5);
- (b) by substituting “ a Scheme” for “ regulations” in subsection (1);
- (c) by substituting “Schemes” for “Regulations” in subsection (2);
- (d) by substituting “ under the Scheme” for “ as last mentioned purporting to be signed by the Director or on his behalf by an officer of the Post Office duly authorised by or under section 55 shall ” in subsection (4).

Amendments to section 11.

10. Section 11 of the Principal Act is amended—

- (a) by substituting the following for subsection (1)(a)—
 - “(a) except as a postal service provider may either generally or in any particular case, with prior express consent of the Authority and every single possible handler and carrier of the postal packet in question, allow, encloses any explosive, dangerous, noxious or deleterious substance, any filth, any sharp instrument not properly protected, any noxious living creature, or any creature, article or thing whatsoever which is likely to injure either other postal packets in course of conveyance or an officer of the postal service provider;”;

- (b) by substituting “not exceeding level 3 on the standard scale” for “of £25” in subsection (2);
- (c) by substituting the following subsections for subsection (3)–
 - “(3) If a postal service provider finds a postal packet to contain any such articles as are mentioned in paragraph (b) or (c) of subsection (1) or of any postal packet having thereon, or on the cover thereof, any words, marks or designs of a libellous character, the postal service provider may refuse to accept or deliver the same and will consult with the Authority as to action to be taken.
 - (3A) The postal service provider shall not be liable for the contents in the transmission or delivery of any such articles as are mentioned in paragraph (b) or (c) of subsection (1) or of any postal packet having thereon, or on the cover thereof, any words, marks or designs of a libellous character.”;
- (d) by deleting “ or of any regulations made thereunder” in subsection (4).

Amendments to section 12.

11. Section 12 of the Principal Act is amended–

- (a) by substituting “ the Postal Service Provider” for “ Director” in the heading;
- (b) by substituting “ postal service provider” for “ Director” on both occasions that word appears; and

by substituting “ a contract may be entered into” for “regulations”;

Amendments to section 13.

12. Section 13 of the Principal Act is amended–

- (a) by deleting paragraph (a) in subsection (2);

- (b) by substituting “ postal service provider” for “ Post Office” in subsection (2)(c); and
- (c) by substituting “ postal service provider” for “ Director or on his behalf by any officer of the Post Office duly authorized by or under section 55” in subsection (3).

Amendments to section 14.

13. Section 14 of the Principal Act is amended–

- (a) by substituting “ a postal service provider” for “ the Director” in subsection (1);
- (b) by substituting “ Collector of Customs” for “Collector of Revenue” in subsection (1);
- (c) by inserting the following subsection after subsection (3)–

“(4) If a postal service provider suspects that a postal packet may contain any item or information which is a threat to the security of Gibraltar, he may, after notifying the Authority and consulting with the police–

- (a) detain and open the postal packet;
- (b) destroy it completely;
- (c) deliver it to the police to keep it for further action, if necessary; or
- (d) reseal and return it to the postal system.”.

Substitution of section 15.

14. The Principal Act is amended by substituting the following section for section 15–

“Recovery of postage, etc.

15. All postage and other sums payable under any Scheme in respect of postal packets may be recovered as a civil debt due to the postal service provider in question.” .

Amendments to section 16.

15. Section 16 of the Principal Act is amended–

- (a) in subsection (1)–
 - (i) by substituting “ postal service provider in question” for “Post Office” in subsection (1);
 - (ii) by substituting “postal service provider in question” for “Director” in line 4;
 - (iii) by substituting “postal service provider” for “Government”;
- (b) by substituting “ postal service provider” for “ Post Office” in subsection (2);
- (c) in subsection (3) by substituting “an officer of the postal service provider of a rank of position approved by the Authority” for “ the Director or on his behalf by an officer of the post office duly authorised by or under section 55”.

Amendments to section 17.

16. Section 17 of the Principal Act is amended–

- (a) in subsection (1)–
 - (i) by substituting “ postal service provider” for “Director”;
 - (ii) by substituting “ Schemes” for “ regulations”;
- (b) by substituting “Such Schemes” for “ Regulations” in subsection (2);

- (c) in subsection (3)–
 - (i) by substituting “ Schemes” for “ regulations”;
 - (ii) by substituting “postal service provider in question” for “Director”;
 - (iii) by substituting “postal service provider” for “Post Office or the Government”;
- (d) in subsection (5)–
 - (i) by inserting “ Royal Gibraltar” before “Post Office” in line 2;
 - (ii) by substituting “a Scheme referred to in subsection (3)” for “such regulations”; and
 - (iii) by inserting “ Royal Gibraltar” before “Post Office” in two places in lines 7 and 9.

Amendments to section 18.

17. Section 18 of the Principal Act is amended–

- (a) in subsection (1)–
 - (i) by substituting “The Royal Gibraltar Post Office may authorise any of its officers” for “The Director may authorize officers of the Post Office or any of them”;
 - (ii) by substituting “the Royal Gibraltar Post Office according to a Scheme” for “him”;
 - (iii) by substituting “the Scheme” for “regulations” on the 3 occasions it appears;
- (b) in subsection (2)–
 - (i) by substituting “any Scheme so provides the Royal Gibraltar Post Office” for “regulations so provide, the Director”;

- (ii) by substituting “ Royal Gibraltar Post Office” for “Post Office”.

Amendments to section 19.

18. Section 19 of the Principal Act is amended substituting “a postal service provider” for “the Post Office” in subsections (1) and (2).

Amendments to section 21.

19. Section 21 of the Principal Act is amended—

- (a) by substituting “postal service provider in question” for “Director”;
- (b) by inserting “to the postal service provider as they apply to the Royal Gibraltar Post Office” after “by regulations, apply”; and
- (c) by substituting “Royal Gibraltar Post Office or other postal service provider in question, as the case may be,” for “Post Office”.

Amendment to section 22.

20. Section 22 of the Principal Act is amended in subsection (1) by substituting “postal service provider in question” for “Post Office”.

Amendments to section 23.

21. Section 23 of the Principal Act is amended—

- (a) by substituting “to a postal service provider in Gibraltar” for “within the exclusive privilege of the Director” in subsection (1);
- (b) in subsection (2)—
 - (i) by substituting “postal service provider” for “Director”;
 - (ii) by substituting “postal service provider” for “Post Office”;

- (c) by substituting “customs” for “revenue” in subsection (5);
- (d) by substituting “customs” for “revenue” in subsection (6);
- (e) by substituting “ which are to be remitted to a postal service provider in Gibraltar and forward any such packets seized to the nearest post office of such postal service provider” for “ within the exclusive privilege of the Director and forward any such packets seized to the nearest post office” in subsection (6).

Amendments of section 24.

22. Section 24 of the Principal Act is amended—

- (a) by substituting “requirements of authorisation under Part I” for “exclusive privilege of the Director,” in subsection (1);
- (b) by substituting “ relevant universal service provider” for “Post Office” in subsection (2); and
- (c) by substituting “ the relevant universal service provider” for “post” in subsection (3).

Amendments of section 25.

23. Section 25 of the Principal Act is amended—

- (a) by substituting “requirements of authorisation under Part I” for “exclusive privilege of the Director,”;
- (b) by substituting “relevant universal service provider” for “Post Office”; and
- (c) by substituting “the relevant universal service provider” for “the Postmaster”.

Amendments of section 26.

24. Section 26 of the Principal Act is amended—

- (a) by substituting “a universal service provider” for “the Director” in subsection (1);

(b) in subsection (2)–

- (i) by substituting “a universal service provider” for “the Director”; and
- (ii) by substituting “Magistrates’ Court” for “Court of First Instance” in subsection (2).

Amendment of section 27.

25. Section 27 of the Principal Act is amended by substituting “universal service provider” for “Post Office”.

Amendment of section 28.

26. Section 28 of the Principal Act is amended by substituting “universal service provider” for “Post Office” in subsection (2).

Amendment of section 30.

27. Section 30 of the Principal Act is amended by substituting “postal service provider” for “Post Office”.

Amendments of section 32.

28. Section 32 of the Principal Act is amended–

- (a) by substituting “relevant postal service provider” for “Post Office” in the frontispiece; and
- (b) by substituting “a postal service provider” for “Post Office” in the proviso.

Amendment of section 33.

29. Section 33 of the Principal Act is amended by substituting “postal service provider in questions or the Authority” for “Director” in subsection (3).

Amendment of section 34.

30. Section 34 of the Principal Act is amended by substituting “postal service provider” for “Post Office”.

Amendments of section 35.

31. Section 35 of the Principal Act is amended by substituting “postal service provider” for “Post Office” in subsections (1) and (2).

Amendment of section 36.

32. Section 36 of the Principal Act is amended by deleting “or upon a horse used for the conveyance on horseback thereof” in paragraph (a).

Amendment of section 38.

33. Section 38 of the Principal Act is amended by substituting “a postal service provider” for “the Director” in subsection (1).

Amendments of section 39.

34. Section 39 of the Principal Act is amended—

- (a) by substituting “a postal service provider” for “the Director” in subsection (1)(a); and
- (b) by substituting “a postal service provider” for “any post office under the Director” in subsection (1)(b).

Amendments of section 40.

35. Section 40 of the Principal Act is amended—

- (a) by substituting “any postal service provider” for “the Post Office” in subsection (2); and
- (b) by substituting “with permission of the postal service provider in question or the Authority” for “by order of the Director” in the proviso to subsection (3);

- (c) by substituting “postal services” for “Post Office” in subsection (6).

Amendments of section 41.

36. Section 41 of the Principal Act is amended—

- (a) by substituting “Authority” for “Director” in subsection (1) on both occasions it appears;
- (b) in subsection (2)—
 - (i) by substituting “Authority” for “Director” on the first third and fourth occasions that that word appears; and
 - (ii) by substituting “is or are used by a postal service provider” for “is or are used by the Director”.

Amendments of section 42.

37. Section 42 of the Principal Act is amended—

- (a) by substituting “a Postal Service Provider” for “the Post Office” in the section heading;
- (b) by substituting “a postal service provider” for “the Post Office” on both occasions those words appear in subsection (1);
- (c) in subsection (2)—
 - (i) by substituting “postal service provider” for “Post Office” on the first occasion those words appear;
 - (ii) by inserting “in the case of a universal service provider,” after “fine of £5, and”;
 - (iii) by substituting “ universal service provider” for “Post Office” on the second occasion those words appear.

Amendment of section 43.

38. Section 43 of the Principal Act is amended—

- (a) by substituting “Main Office of the Universal Service Provider” for “General Post Office” in the heading; and
- (b) by substituting “main offices of the universal service provider” for “General Post Office”.

Amendments of section 46.

39. Section 46 of the Principal Act is amended—

- (a) by substituting the following subsection for subsection (1)—
 - “(1) Without prejudice to the provisions of the Criminal Procedure Act, in any legal proceedings for any offence committed or attempted to be committed, or any malicious, injurious or fraudulent act or thing done in, upon or with respect to the postal service provider or the postal service revenue, or any mail bag, postal packet or money order, or any chattel, money or valuable security sent by post, or in any way concerning any property under the management or control of the universal service provider, it shall be sufficient to allege the property to belong to the universal service provider and to allege any such act or thing to have been done with intent to injure or defraud the universal service provider without in either case naming the person who is universal service provider, and it shall not be necessary to allege or to prove upon the trial or otherwise that the mail bag, postal packet, money order, chattel, money, security or property was of any value.”; and
- (b) by substituting “postal service provider” for “Post Office” on both occasions those words appear in subsection.

Amendments of section 47.

40. Section 47 of the Principal Act is amended—

- (a) by deleting “of Director” in the section heading;

- (b) by substituting “postal service provider in question” for “Director” in subsection (1); and
- (c) by substituting the following subsection for subsection (2)–
 - “(2) Where the consent or order of the postal service provider is required to or for any prosecution, an instrument purporting to be executed by him or on his behalf by an officer of the postal service provider duly authorised by and stating that the prosecution has been consented to by the postal service provider or ordered or consented to by the universal service provider shall be sufficient proof of that fact, unless the contrary is shown.”.

Substitution of section 48A.

41. The Principal Act is amended by substituting the following section for section 48A–

“Sale of stamps.

- 48A.(1) All Stamps including stamps bearing the Royal Cipher or effigy of Her Majesty the Queen shall be sold to the members of the public at the post offices of the Royal Gibraltar Post Office and may be sold at such other Government offices and between such hours as the Royal Gibraltar Post Office with the prior approval of, or on request from the Minister may appoint.
- (2) The Royal Gibraltar Post Office may, with the prior approval of the Minister, appoint stamp vendors who shall be authorised to sell stamps to the members of the public and may allow such stamp vendors such commission as may be prescribed on every purchase of stamps made by them for not less than £25 at any one time.”.

Amendments of section 49.

42. Section 49 of the Principal Act is amended–

- (a) by substituting “a universal service provider” for “the Director” in subsection (1);

- (b) in subsection (2)–
 - (i) by substituting “a universal service provider” for “the Director” on both occasions that those words appear;
 - (ii) by substituting “ universal service provider” for “Post Office”.

Substitution of section 50.

43. The Principal Act is amended by substituting the following section for section 50–

“Appointment of person in charge of, and officers of the Post Office.

50. The Government shall appoint a person to be in charge of the Royal Gibraltar Post Office, who shall be in charge of the administration of the Royal Gibraltar Post Office, and such officers of the Royal Gibraltar Post Office as the Government may think fit.”.

Substitution of section 51.

44. The Principal Act is amended by substituting the following section for section 51–

“Officers to make declaration.

51. All officials of the Royal Gibraltar Post Office shall upon appointment or employment make a declaration before a justice of the peace in such form as may be prescribed by Regulations.”.

Amendments to section 52.

45. Section 52 of the Principal Act is amended–

- (a) by substituting the following section heading for the section heading–

“Surrender of clothing by officer of Royal Gibraltar Post Office on ceasing to be officer”;

- (b) in subsection (1)–
 - (i) by substituting “Royal Gibraltar Post Office” for “Post Office”; and
 - (ii) by substituting “Royal Gibraltar Post Office” for “Director”.

Substitution of section 53.

46. The Principal Act is amended by substituting the following section for section 53–

“Royal Gibraltar Post Office expenses.

- 53. All expenses incurred by the Royal Gibraltar Post Office in the execution of this Act or otherwise in the management of the Royal Gibraltar Post Office, but not otherwise provided for by any other law, shall, subject to the financial provisions in section 4E, be paid out of the Consolidated Fund.”.

Amendments to section 55.

47. Section 55 of the Principal Act is amended–

- (a) by substituting “Royal Gibraltar Post Office” for “Director” in the section heading;
- (b) by substituting the following subsections for subsections (1) and (2)–
 - “(1) Any instrument or document required or authorised to be executed or signed by the person appointed under section 50 may be executed or signed on his behalf by such other officers of the Royal Gibraltar Post Office (whether described by name or by reference to their rank or office or class of office) as may be prescribed, either generally or as respects any class of instruments or documents, or in respect of any particular instrument or document.

- (2) Any instrument or document purporting to be executed or signed by a duly authorised officer of the Royal Gibraltar Post Office in that behalf by or under this section shall, until the contrary is proved, be deemed to have been duly executed or signed, without proof of the authority or official character of the person purporting to have executed or signed it.”; and
- (c) by substituting “ person appointed under section 50 of this Act ” for “Director” in subsection (3).

Amendments to section 56.

48. Section 56 of the Principal Act is amended—

- (a) by substituting “Universal Service Provider” for “Director” in the section heading;
- (b) by substituting “universal service, by the universal service provider” for “Post Office, by,” ;
- (c) by deleting “or any officer of the Post Office”; and
- (d) by substituting “universal service provider” for “Director”.

Amendment to section 57.

49. Section 57 of the Principal Act is amended—

- (a) in subsection (1), by substituting “customs” for “revenue” and “relevant postal service provider” for “Director”; and
- (b) in subsection (2), by substituting “customs” for “revenue”.

Insertion of new section 58.

50. The Principal Act is amended by inserting the following section after section 57—

Savings and transitional provisions.

58.(1) Nothing in this Act shall make unlawful—

- (a) the conveyance and delivery of a letter personally by the sender thereof;
- (b) the sending, conveyance and delivery of a letter by means of a private friend who himself delivers that letter to the addressee;
- (c) the sending, conveyance and delivery of a letter concerning the private affairs of the sender or addressee thereof by means of a messenger sent for the purpose by the sender of the letter;
- (d) the sending, conveyance and delivery otherwise than by post of any document issuing out of a court of justice or of any return or answers thereto;
- (e) the sending and conveyance of letters from merchants who are the owners of a merchant ship or commercial aircraft, or of goods carried in such a ship or aircraft, by means of that ship or aircraft and the delivery thereof to the addressee by any person employed for the purpose by those merchants, so, however, that no payment or reward, profit or advantage whatsoever is given or received for the conveyance or delivery of those letters; and
- (f) the sending, conveyance and delivery of letters by land by means of a common carrier, being letters concerning and for delivery with goods carried by him, so, however, that no payment or reward, profit or advantage whatsoever is given or received for the conveyance or delivery of those letters:

(2) Nothing in subsection (1) shall authorise any person to make a collection of letters for the purpose of their being sent or conveyed in any manner authorised by that subsection.

(3) Notwithstanding anything in subsection (1) the following persons are expressly forbidden to carry a letter or to receive, collect or deliver a letter, even if they receive no payment or reward for doing so—

- (a) except for such letters as are mentioned in paragraph (e) of subsection (1) owners of, or any person on board, any ship or aircraft on a voyage or flight between, to or from places in Gibraltar;

(b) except for such letters as are mentioned in paragraph (f) of subsection (1) common carriers by land or their employees or agents;

(c) owners, drivers or conductors of public service vehicles.

(4) Subsection (3) shall not make unlawful the receipt, carriage or delivery of letters between places in Gibraltar by any person which would otherwise be lawful by virtue of paragraph (a) or, if that person is a passenger, paragraph (b) or (c) of subsection (1).

(5) For the purposes of this section, the expression “letter” includes a postal packet, so, however, as not to include a newspaper unless a communication not forming part of a newspaper is contained therein or a parcel.

(6) Notwithstanding the provisions of section 4F, upon the coming into operation of the Post Office Act (Amendment) Regulations 2012, the Royal Gibraltar Post Office shall be deemed to have been authorised by the Authority to provide a universal service until such time as an individual licence is issued.

(7) Any service provided by the Royal Gibraltar Post Office pursuant to Regulations made under the Post Office Act and existing prior to the coming into operation of the Post Office Act (Amendment) Regulations 2012 shall be valid for a period of 6 months from the date of the coming into operation of the Post Office Act (Amendment) Regulations 2012 unless, before then, they are made under the relevant section of this Act as amended by the Post Office Act (Amendment) Regulations 2012.”.

Addition of Schedules.

51. The Principal Act is amended by adding the following Schedules after section 58—

“SCHEDULE 1

Section 4E

**GUIDANCE ON CALCULATING THE NET COST, IF ANY,
OF UNIVERSAL SERVICE**

PART A

DEFINITION OF THE UNIVERSAL SERVICE OBLIGATIONS

Universal service obligations are the obligations referred to in section 4B placed upon a postal service provider under Part I which concern the provision of a postal service throughout Gibraltar including, where required, uniform prices for the provision of that service or provision of certain free services for blind and partially-sighted persons.

Those obligations may include, among others, the following—

- (a) a number of days of delivery, superior to those set in Part I;
- (b) accessibility to access points, in order to satisfy the universal service obligations;
- (c) the tariffs affordability of the universal service;
- (d) uniform prices for universal service;
- (e) the provision of certain free services for blind and partially-sighted persons.

PART B

CALCULATION OF NET COST

The Authority is to 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 obligations 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 obligation 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 cost 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—

- (a) 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;
- (b) 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 Minister, 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 responsibility for verifying the net cost lies with the Authority. 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 has to ensure that they 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 section 4F(4) 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 fund administrator is to be responsible for collecting contributions from undertakings, which are assessed as liable to contribute to the net cost of universal service obligations in Gibraltar and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund.

SCHEDULE 2

Sections 4N and 4O

**QUALITY STANDARDS FOR INTRA-EUROPEAN UNION
CROSS-BORDER MAIL**

The quality standards for intra-European Union cross-border mail in each country are to be established in relation to the time limit for routing measured from end to end (*) for postal items of the fastest standard category according to the formula $D + n$, where D represents the date of deposit (**), and n the number of working days which elapse between that date and that deliver to the addressee.

Quality standards for Intra-Community Cross Border Mail

Time Limit	Objective
D+3	85% of items
D+5	97% of items

The standards must be achieved not only for the entirety of intra-European Union traffic but also for each of the bilateral flows between two Member States.

(*) End-to-end routing is measured from the access point to the network to the point of delivery to the addressee.

(**) The date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the following day of collection.”.

Dated 13th December, 2012.

S LINARES,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Post Office Act in order to transpose into the law of Gibraltar Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of services, as amended by the Directive 2002/39/EC, Regulation (EC) No 1882/2003 and Directive 2008/6/EC.