



SEANAD ÉIREANN

**AN BILLE UM RIALÁIL CUMARSÁIDE (SEIRBHÍSÍ POIST)
2010**

**COMMUNICATIONS REGULATION (POSTAL SERVICES)
BILL 2010**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM RIALÁIL CUMARSÁIDE (SEIRBHÍSÍ POIST) 2010 —AN COISTE COMMUNICATIONS REGULATION (POSTAL SERVICES) BILL 2010 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are
denoted by an asterisk.*

SECTION 6

1. In page 9, subsection (1), between lines 15 and 16, to insert the following:

“ “distribution centre” means the main hub location where efficient automatic processing of mail takes place in large volumes sufficient for the operation of a national mail collection and delivery network;”.

—*Senator Joe O'Reilly.*

- * 2. In page 9, subsection (1), line 42, to delete “, subject to subsection (2),”.
- * 3. In page 10, lines 26 to 28, to delete subsection (2).

SECTION 14

4. In page 16, line 7, after “Directive” to insert “, unless otherwise determined by the Minister”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

SECTION 15

5. In page 16, subsection (2), line 15, after “providers” to insert “, trade unions”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

SECTION 16

6. In page 16, subsection (1)(a), lines 27 to 29, to delete all words from and including “except” in line 27 down to and including “exceptional,” in line 29.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

7. In page 16, subsection (1)(a)(ii), lines 32 to 34, to delete all words from and including “or,” in line 32 down to and including “installations” in line 34.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

- * 8. In page 16, subsection (1)(b)(i), line 38, after “kilograms” to insert “in weight”.
- * 9. In page 16, subsection (1)(b)(iii), line 43, after “kilograms” to insert “in weight”.

[SECTION 16]

10. In page 18, subsection (12), between lines 28 and 29, to insert the following:

“ “working day” includes a Saturday if the Commission so decides.”.

—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast,
Ivana Bacik, Dominic Hannigan.*

SECTION 17

11. In page 18, subsection (1), line 32, to delete “7 years” and substitute “20 years”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

12. In page 19, subsection (3), line 4, to delete “may” and substitute “will”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

13. In page 19, subsection (3), to delete lines 5 to 10 and substitute the following:

“from the expiry of that period designate a Universal Postal Service Provider.”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

14. In page 19, between lines 10 and 11, to insert the following subsection:

“(4) A decision under *subsection (3)(b)* shall be laid before the Houses of the Oireachtas.”.

—*Senator Joe O'Reilly.*

* 15. In page 19, subsection (5), line 20, to delete “may specify” and substitute “may determine”.

16. In page 19, subsection (5), line 26, after “designated” to insert the following:

“and having regard to the cost to the consumer and to the quality of service”.

—*Senator Joe O'Reilly.*

SECTION 19

17. In page 20, subsection (2), lines 42 to 47, to delete paragraphs (a) and (b) and substitute the following:

“(a) the terms and conditions, excluding those specifying the amount of the charges, in accordance with which a postal service user may avail of the postal services concerned, and”.

—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast,
Ivana Bacik, Dominic Hannigan.*

18. In page 21, subsection (3), line 4, to delete “may approve” and substitute “will agree”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

19. In page 21, subsection (3), line 5, to delete “or without amendment” and substitute “the Universal Postal Service Provider”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

[SECTION 22]

SECTION 22

- * 20. In page 23, subsection (3), lines 23 and 24, to delete all words from and including “under” in line 23 down to and including “2010” in line 24 and substitute the following:

“and, subject to section 29 of the Arbitration Act 2010, that Act shall apply to an arbitration under this Act”.

SECTION 24

- * 21. In page 24, subsection (3), lines 40 to 44 and in page 25, lines 1 to 11, to delete paragraph (b) and substitute the following:

“(b) A universal postal service provider shall have the power to charge and recover from the person—

(i) from whom a postal packet to which this subsection applies purports to come, or

(ii) by whom or on whose behalf such postal packet purports to have been sent,

as a simple contract debt in any court of competent jurisdiction, the difference between the postage which would have been payable had the postal packet been posted in the State and the amount actually paid or payable to the universal postal service provider in respect of that postal packet posted outside the State to an address in the State and purporting to be sent by or on behalf of someone who is residing or carrying on business in the State unless terminal dues, which meet the requirements specified in *subsection (1)*, apply to that postal packet.”.

SECTION 25

22. In page 25, line 19, to delete “overall limit = (Δ CPI) — X” and substitute “overall limit = (Δ CPI) – X + Y”.

—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast, Ivana Bacik, Dominic Hannigan.*

23. In page 25, subsection (1), between lines 25 and 26, to insert the following:

“Y is the adjustment specified by the Commission to reflect changes in volumes of postal packets within the basket of postal services; and”.

—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast, Ivana Bacik, Dominic Hannigan.*

24. In page 25, lines 27 to 36, to delete subsection (2) and substitute the following:

“(2) Subject to *subsection (3)*, where the Commission is of the opinion that there is no effective competition in the market for the supply of the postal services concerned, the Commission shall, following a public consultation process in relation to the services to be included in a basket of postal services and as the Commission considers appropriate, in relation to the adjustment referred to in the construction of “X” and “Y” in the definition of “price cap” in *subsection (1)*, make a decision (in this section referred to as the “price cap decision”) specifying a price cap in respect of one or more than one basket of services.”.

—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast,*

[SECTION 25]

Ivana Bacik, Dominic Hannigan..

- 25.** In page 26, subsection (4), line 1, to delete “5 years” and substitute “3 years”.
—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,*
Joe O'Reilly.

- 26.** In page 26, lines 5 to 12, to delete subsection (5) and substitute the following:

“(5) On or after the expiration of 3 years from the date specified in the price cap decision as the date from which the price cap is to apply, the Commission may, subject to *subsection (10)*, conduct a review of the price cap and following such a review, the Commission may make a decision amending the price cap decision as regards any basket of postal services specified in the price cap decision or the adjustment referred to in the construction of “X” and “Y” in the definition of “price cap” in *subsection (1)*, or both.”.

—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast,*
Ivana Bacik, Dominic Hannigan.

SECTION 28

- * **27.** In page 29, subsection (3), line 8, after “necessary” to insert “to resolve the dispute”.

- * **28.** In page 29, subsection (4), to delete lines 10 to 15 and substitute the following:

“(4) With regard to any intervention by the Commission under *subsection (2)* or (3), the Commission may decide—

(a) not to intervene in the negotiations concerned, having carried out a preliminary examination of the matter, or

(b) to discontinue the intervention in those negotiations.”.

- * **29.** In page 29, subsection (5), line 21, to delete “shall resolve” and substitute “shall make a decision in relation to”.

- 30.** In page 29, subsection (5), line 23, after “it” to insert the following:

“including the use of Independent Mediation. In determining access charges the cost of providing the Universal Service Obligation must be taken into account in addition to avoided costs”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,*
Joe O'Reilly.

- 31.** In page 30, subsection (9), line 12, after “access.” to insert the following:

“Having regard to the designation of An Post as the universal postal service provider at *section 17(1)* and the costs associated with same, access to the An Post network will not be below the four automated regional mail centres.”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,*
Joe O'Reilly.

SECTION 29

Section opposed.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,*
Joe O'Reilly.

[SECTION 30]

SECTION 30

- 32.** In page 30, before section 30, but in Chapter 4, to insert the following new section:

“Closure of certain postal infrastructure. 30.—A postal service provider that operates a post office shall not close the post office (other than for a temporary purpose) without the consent, by reserved function, of the local authority in which the post office is situate.”.
—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast, Ivana Bacik, Dominic Hannigan.*

- 33.** In page 30, before section 30, but in Chapter 4, to insert the following new section:

“Closure of post boxes etc. 30.—A postal service provider that operates a post box or similar access point shall not close the post box or similar access point (other than for a temporary purpose) without the consent, by reserved function, of the local authority in which the post box or similar access point is situate.”.
—*Senators Michael McCarthy, Alex White, Brendan Ryan, Phil Prendergast, Ivana Bacik, Dominic Hannigan.*

SECTION 31

- * **34.** In page 32, subsection (1), lines 13 and 14, to delete “among postal service providers” and substitute “among providers”.

- 35.** In page 32, subsection (1), line 17, after “burden.” to insert the following:

“Alternatively the Commission, with the consent of the Minister, will apportion the net cost of universal postal service provision to the State.”.
—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris, Joe O'Reilly.*

- * **36.** In page 33, subsection (7)(b), to delete lines 22 to 24 and substitute the following:

“may be, under *section 30(5)(b)*, and”.

- 37.** In page 33, after line 46, to insert the following subsection:

“(9) State aid may be available to the universal service provider if deemed necessary by ComReg, and with the consent of the Minister and the Minister for Finance.”.
—*Senator Joe O'Reilly.*

SECTION 33

- 38.** In page 36, between lines 32 and 33, to insert the following subsection:

“(10) Postal service providers will be licensed only in circumstances where they are able to prove capability of providing an end to end service.”.
—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris, Joe O'Reilly.*

SECTION 36

- * **39.** In page 38, lines 8 to 14, to delete subsection (3) and substitute the following:

[SECTION 36]

“(3) Where the Commission, having considered the representations (if any) made by or on behalf of the postal service provider in accordance with *subsection (2)*, decides to suspend or withdraw the authorisation, the Commission shall notify the postal service provider in writing of the decision.”.

* 40. In page 38, lines 15 to 25, to delete subsections (4) to (6).

41. In page 38, subsection (4), line 18, to delete “suspended”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

SECTION 37

* 42. In page 38, subsection (1), line 26, to delete “A postal service provider” and substitute the following:

“Subject to *subsection (5)**, a postal service provider”.

[**Note: This is a reference to the subsection proposed to be inserted by amendment No. 43.*]

* 43. In page 38, between lines 39 and 40, to insert the following subsection:

“(5) This section does not apply to a universal postal service provider in the provision of a universal postal service.”.

SECTION 39

44. In page 41, between lines 4 and 5, to insert the following:

“(c) Where there is a dispute in relation to a levy drawn up by the Commission either party will be referred to binding arbitration.”.

—*Senators Joe O'Toole, Ned O'Sullivan, Rónán Mullen, David Norris,
Joe O'Reilly.*

SECTION 47

* 45. In page 45, before section 47, but in Chapter 9, to insert the following new section:

“Appeals to High Court.

47.—(1) In this section “decision” means—

(a) a decision made by the Commission under *section 17(2), (3) or (4), 23(2), 25(2), (5) or (9), 28(4) or (5) or 36(1)*,

(b) a determination made by the Commission under *section 16(1)(a)(ii), 17(5), 27(9) or 30(4) or section 30(11A)(b)(inserted by section 39) of the Principal Act*, or

(c) a direction given by the Commission under *section 16(10), 19(7), 26(1), 27(7), 29(2), 37(3) or 38(3) or (6)*.

(2) A user or postal service provider (in this section referred to as the “appellant”) whose interests are materially affected by a decision may, not later than 28 days after the user or postal service provider has been notified of the decision, appeal to the High Court against that decision.

[SECTION 47]

(3) An appeal under this section shall be made in such manner as is prescribed by rules of court of the High Court or as the High Court may direct.

(4) Notice of an appeal and the grounds for it shall be given by the appellant to the Commission in such manner as is prescribed by rules of court of the High Court or as the High Court may direct.

(5) The High Court shall hear and determine an appeal under this section and may make such orders as it considers appropriate.

(6) The orders that may be made by the High Court on the hearing of an appeal under this section include—

- (a) an order affirming or setting aside the decision in whole or in part, and
- (b) an order remitting the matter to be decided again by the Commission in accordance with the directions of the Court.

(7) Subject to *subsection (8)*, an appeal under this section does not—

- (a) affect the operation of the decision appealed against, or
- (b) prevent the taking of action to implement the decision, unless the High Court otherwise orders.

(8) (a) Where an appeal is made under this section against a decision, the High Court may make such order staying or otherwise affecting the operation or implementation of the decision, or a part of that decision, as the Court considers appropriate, pending the hearing of the appeal.

(b) If an order is in force under *paragraph (a)* (including an order that has previously been varied on one or more than one occasion under this paragraph), the High Court may make a further order varying or revoking the order.

(c) An order in force under *paragraph (a)* (including an order that has previously been varied on one or more than one occasion under *paragraph (b)*)—

(i) is subject to such conditions as are specified in the order, and

(ii) has effect until—

(I) if a period for the operation of the order is specified in the order, the expiry of that period or, if the appeal is determined before the end of that period, the making of the determination, or

(II) if no period is so specified, the giving of a decision on the appeal.

(9) The determination of the High Court on the hearing of an appeal under this section is final, except that, by leave of the High Court, an appeal on a specified question of law shall lie to the Supreme Court.”.

* 46. In page 46, subsection (4)(b), line 25, after “1983,” to insert “as applied by section 48*.”.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 47.]

[SECTION 48]

SECTION 48

* 47. In page 46, before section 48, to insert the following new section:

“Ministerial
directions to postal
service providers.

48.—(1) Subject to *subsection (2)*, references to the company in section 110 of the Act of 1983, in so far as that section relates to An Post, shall be read as references to a postal service provider.

(2) Without prejudice to the application of section 110 of the Act of 1983 to An Post, that section applies, in respect of other postal service providers, only for the purposes of *section 47* and the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993*.

(3) The *Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993* is amended—

- (a) in paragraph (a)(ii) of the definition of “interception” in section 1 by substituting “an offence under *section 47* of the *Communications Regulation (Postal Services) Act 2010*” for “an offence under section 84 of that Act”,
- (b) in section 9(3) by substituting “a postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2010*)” for “An Post”,
- (c) in section 10(1)(a) by substituting “*section 47* of the *Communications Regulation (Postal Services) Act 2010* or section 98 of the Act of 1983” for “section 84 or 98 of the Act of 1983”,
- (d) in section 10(2)(a) by substituting “*section 47(4)* of the *Communications Regulation (Postal Services) Act 2010* or section 98(2) of the Act of 1983” for “section 84(2) or 98(2) of the Act of 1983”, and
- (e) in section 10(2)(d)(ii) by substituting “a postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2010*)” for “An Post”.

(4) Section 110 of the Act of 1983 is amended—

- (a) in subsection (6) by substituting “Subject to subsection (8), a person who” for “A person who”, and
- (b) by inserting the following after subsection (7):

“(8) In the case of An Post and any other postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2010*) subsection (6) applies only in respect of non-compliance by An Post or any such postal service provider, as the case may be, with directions issued under this section for the purposes of *section 47* of the *Communications Regulation (Postal Services) Act 2010* and the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993*.”.

SECTION 52

* 48. In page 48, lines 21 and 22, to delete “Act, or” and substitute the following:

“Act,

[SECTION 52]

- (ii) section 13 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, or”.

* 49. In page 48, line 23, to delete “(ii) *section 33(7)*,” and substitute the following:

“(iii) *section 33(7)*,”.

SECTION 54

* 50. In page 49, to delete lines 5 to 7 and substitute the following:

“(i) section 25 of the Seanad Electoral (University Members) Act 1937;

(ii) section 57 of the Electoral Act 1992;”.

SECTION 55

* 51. In page 49, before section 55, to insert the following new section:

“Amendments to
Seanad Electoral
(University
Members) Act 1937.

55.—(1) Section 3 of the Seanad Electoral (University Members) Act 1937 is amended by inserting the following definition:

“ ‘relevant postal service provider’ has the meaning assigned to it by *section 54* of the *Communications Regulation (Postal Services) Act 2010*.”.

(2) Section 5 of the Seanad Electoral (University Members) Act 1937 is amended—

(a) by renumbering the existing provision as subsection (1) of that section, and

(b) by inserting the following after subsection (1):

“(2) The expenses incurred by reason of this Act by a relevant postal service provider (whether such expenses relate to the exercise by candidates at elections of the right of free postage conferred by section 25 of this Act or are otherwise so incurred in relation to a Seanad election) shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of the Central Fund or the growing produce thereof.”.

SECTION 56

* 52. In page 50, subsection (3), lines 21 and 22, to delete paragraph (b) and substitute the following:

“(b) by substituting the following for subsection (3):

“(3) The relevant postal service provider may permit a candidate to exercise the right aforesaid before the candidate is entitled under subsection (2) so to do upon the candidate giving such security as may be required by the relevant postal service provider for the payment of the postage on all communications sent by the candidate under this section in the event of the candidate not becoming so entitled to exercise the said right.”,

and”.

[*SECTION 58*]

SECTION 58

* **53.** In page 51, subsection (1), to delete lines 4 to 8 and substitute the following:

“ “postcode” means a code consisting of numbers or other characters or both numbers and other characters that identifies the locality of an address and, where appropriate, the geographic location of an address;

“distribution” and “postal packets” have the meanings assigned to them respectively by *section 6*.”.