



Office of Utility Regulation

## **Regulation in Guernsey**

### **Revised Consultation Procedures Information paper**

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# 1. Introduction

The success of a regulatory regime is in part driven by the quality of the decision making process. In Guernsey, the Office of Utility Regulation (“OUR”) from the commencement of its work in 2001 has sought to ensure that decisions and actions of the Office are informed by ensuring we have access to the best available information. Gaining access to this information takes many forms including independent research, information provided by other regulators and importantly through information provided by interested parties who may be impacted by decisions of the OUR.

To-date the OUR has used a relatively straight forward consultation process by providing a structured framework for interested parties to put forward their comments on issues of importance within the regulatory regime. Since the process was established by the States of Guernsey on 1<sup>st</sup> October 2001<sup>1</sup>, the Office of Utility Regulation (“OUR”) has published thirty-nine consultation papers in regulating the Guernsey utility markets of post, electricity and telecommunications.

The first document published by the OUR (Document OUR 01/01) described the approach the Office would employ to develop regulation in Guernsey and also set out guidelines on the public consultation process that the OUR would follow in order to receive comments and suggestions from interested parties. These original guidelines were then reviewed and updated in January 2004 in document OUR 04/01 to allow for access to the comments of respondents to consultations. The OUR believes this to be an important step in aiding the transparency of decision-making and ensuring that all parties have confidence in the manner in which key regulatory decisions are determined.

The DG is mindful to keep such a vital regulatory process under regular review to ensure it is operating as effectively as possible. Following the successful use earlier this year of ‘draft decisions’, the OUR is amending its consultation procedures to include this extra procedure as a formal part of how we consult on and determine regulatory decisions. The Director General believes this will aid both those parties interested in the development of the regulatory regime but also the OUR’s decision making process. This paper therefore replaces the consultation procedures set out in Document OUR 04/01.

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<sup>1</sup> Under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

## **2. Background**

### **2.1. Legal Background**

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“the Regulation Law”) provides overarching duties and objectives that guide the DG when he is carrying out his functions. These include balancing and taking account of:

- the interests of consumers and users in the Bailiwick in relation to cost, quality and availability of services;
- the need to satisfy demand for relevant services;
- the economic and social development and well-being of the Bailiwick;
- the introduction and promotion of effective sustainable competition;
- the introduction of innovation and new services and the improvement of services; and
- any effects on the environment.

The Law also requires that the DG acts in a way that is fair, impartial, independent, timely, transparent and objective. The consultation process employed by the OUR is an important element in complying with its legislative obligations.

### **2.2. OUR Principles**

While each of the three utility sectors has different characteristics the DG nonetheless considers that a common set of overarching principles could apply to how the OUR regulates the market in all three sectors. Those principles were set out in Document OUR 01/01 and include the following:

- In line with international experience, users’ interests will best be served by the creation, through regulation, of an environment that allows competitive forces to operate effectively wherever feasible.
- To ensure that user and industry needs are understood, and that decisions are well informed, the DG will consult interested parties appropriately.
- Light-handed regulation is preferred; regulation is appropriate only if it achieves the objectives of creating a benefit to consumers in Guernsey and supporting the economic and social strategy of the Bailiwick.
- The DG’s role in protecting the interests of any of the regulated industries (including current and future operators in these) exists only in so far as is necessary to ensure the industry operates effectively and is able to satisfy user needs.
- Decisions, directions, Regulations, licence conditions and licensing application procedures will be fair, open and transparent.
- Less regulation may be needed in time, once markets begin to operate more competitively.

The DG believes that these principles have operated effectively to date and continue to be appropriate to the regulatory regime in Guernsey. He will therefore continue to apply these principles to the operation of the OUR.

### **3. Review of the Consultation Process**

Public consultations have been essential to the OUR in helping to frame the development of the regulatory regime in the Bailiwick. In the past four years the OUR has consulted on a number of major issues, including price controls for the electricity, postal and telecoms sectors, which have benefited all consumers and businesses in the Bailiwick. The DG believes that the consultation process (as described in Document OUR 01/01 and revised in OUR 04/01) has operated effectively and efficiently. In particular, the process has been flexible to meet the needs of a wide range of consultation topics, and has offered clear guidance to participants whilst also being appropriate to the size of Guernsey and the resources available to the OUR.

The OUR appreciates that during the consultative process it is important that participants are offered sufficient opportunity to provide input and comments in a structured format in order to help inform the DG in arriving at any decision. It is equally important, particularly for significant decisions on matters such as price controls which will have far reaching implications for both industry and consumers, that interested parties are kept informed of the DG's decision-making process in order that they can fully consider the implications of any decision.

It is for these reasons that the DG considers that the consultation process should now be updated as follows:

- the period for consultation should be extended from four weeks to six weeks, although there may be certain circumstances where this may need to be shorter or longer depending on the topic concerned;
- following the consultation period the DG will consider all responses and then publish a Report on the Consultation and a Draft Decision in which he will set out the proposals of the draft decision and invite comments on the matters set out in the paper. The OUR will seek to provide a further four week period for the submission of comments on the Draft Decision, following which the final decision notice will be published on the OUR website along with any non-confidential responses to the draft decision.

The following section amends the Consultation guidelines to take this into account.

#### **3.1. *Guidelines for Consultation Process***

This section sets out guidelines for the consultation process. The Director General will keep these guidelines under review and may amend them from time to time to ensure that consultations are operating as effectively as possible.

Where a public consultation is undertaken, the consultation paper or papers will be made available on the OUR website, and in hard copy directly from the OUR. A notice shall be placed in a local newspaper, and where appropriate in the Gazette

Officielle, stating the availability of the consultation paper, the topic being consulted on, the closing date for submissions and contact details within the OUR.

In general, the OUR will seek to provide a six-week period for the submission of responses, but this may need to be shorter or longer depending on the topic concerned. Factors that may affect the length of consultation period include:

- the complexity of the issues addressed;
- the stakeholders who might wish to respond to the paper;
- other related consultations that the same parties may be responding to (and therefore the overall effort required to respond);
- any statutory timings, and
- the urgency of the issue and the timing for any final decision.

Interested parties will be invited to make submissions in writing, either by email or in hard copy (fax or post). The OUR's preference will be to receive responses in electronic format, and preferably in .pdf format in order to facilitate their publication on the OUR website. However, documents in other formats will be accepted.

The OUR is also willing to meet with any interested party during the consultation period to discuss any aspect of the matter under consultation and also following the publication of the draft decision. In particular, where the OUR believes issues are of particular interest to end-users (e.g. such as decisions affecting prices) we will endeavour to meet with consumer and industry representatives to ensure the OUR's decision making is as widely informed as possible.

All responses received to consultations and draft decisions will be made available by their publication in .pdf format on the OUR website ([www.regutil.gg](http://www.regutil.gg)). Submission of a response to a consultation will be taken to include consent to such disclosure. However, exceptions will be made where parties wish to submit material on a confidential basis, for example because it is commercially sensitive. Respondents will be required to mark such material as confidential clearly in their submissions, include it in a separate annex and explain why it is confidential if they do not wish it to be made public.

Following the closing date for consultations, the OUR will consider all responses received before arriving at a Draft Decision. The Report on the Consultation and Draft Decision will then be published on the OUR website and will be available from the OUR in hard copy. A notice will be placed in a local newspaper, and where appropriate in the Gazette Officielle, stating the availability of the Draft Decision paper, the closing date for submissions and contact details within the OUR.

The Draft Decision paper will provide a general review of submissions, detail the OUR's response to them and provide reasons for the proposed decision. The OUR will at the same time publish the non-confidential responses received in response to the consultation. The OUR will then seek to provide a minimum of four weeks for the submission of comments on the draft decision (as with the initial consultative period, this may need to be shorter or longer depending on the topic concerned) during which time participants will again be invited to make submissions in writing, either by email or in hard copy.

Following the closing date for responses, the OUR will consider all comments received before arriving at a final decision. A final Decision paper will then be published on the OUR website and will be available from the OUR in hard copy. This paper will provide a general review of submissions on the Draft Decision, the OUR's response to them and reasons for the final decisions. The OUR will at the same time publish the non-confidential responses received to the Draft Decision paper.

## **4. Conclusion**

The DG is grateful for the continued cooperation of interested parties in helping to shape and develop the regulatory regime in the Bailiwick. The OUR welcomes the participation of all interested parties in the consultative process and would like to encourage all affected parties, including consumers, businesses and utility service providers, to ensure that their views are heard by responding to consultations. The DG believes the changes being made to the consultation process will strengthen further the decision making process and the principles and procedures set out in this document are designed to assist and facilitate this and all parties are invited to participate.

The OUR in planning its work programme going forward factor in the revised procedures to ensure all parties have an opportunity to participate in the continuing development of the regulatory regime in Guernsey

**/END**