



Office of Utility Regulation

Postal Licence Terms and Conditions

Consultation Paper

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Office of Utility Regulation

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1. Introduction

The Director General Designate of the Office of Utility Regulation ("the Director General") is currently preparing licence terms and conditions that will apply in the postal sector in Guernsey from 1st October 2001. The framework within which these conditions are being developed include the following measures:

- Legislation approved by the States and due to be commenced in October 2001¹,
- Expected States Directions to the Director General in relation to the provision of a universal postal service, the extent of competition in the postal sector, and the identity of the first licensee in the postal sector to have a universal service obligation ("USO")².

Under the legislative proposals currently being put in place, it is intended to transform the States of Guernsey Post Office Board ("Guernsey Post") into a States Trading Company on 1 October 2001. At the same time, with the commencement of the Post Office (Bailiwick of Guernsey) Law, 2001, Guernsey Post will no longer be authorised to provide postal services under the Post Office (Guernsey) Law, 1969. Therefore it will be necessary for licence terms and conditions to be in place in time to issue a licence to Guernsey Post if it is to be authorised to provide postal services from 1 October 2001.

This document sets out proposed licence terms and conditions that are likely to apply to Guernsey Post after 1st October 2001 and seeks comments from interested parties.

This document does not constitute legal, technical or commercial advice; the Director General is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director General to regulate the market generally.

2. Structure of the Paper

This paper is structured as follows:

- Section 3 details the consultation procedure and timetable;
- Section 4 provides more detail on the legislative background and related consultation documents.
- Section 5 briefly summarises the proposed licence conditions;

¹ The Regulation (Bailiwick of Guernsey) Law, 2001 (Billet d'Etat No. 1, 2001), and the Post Office (Bailiwick of Guernsey) Law, (Billet d'Etat No. VI, 2001).

² The Director General understands that the States of Deliberation will consider States Direction in the Postal Sector at its meeting in September 2001.

- Section 5 sets out more detail on certain specific conditions on which comments are invited;
- Appendix 1 presents a table setting out each condition and its purpose;
- Appendix 2 sets out a draft pro forma licence including terms and conditions;

Respondents are requested to comment on the proposed terms and conditions as set out in Appendices 2, and on the purpose of the conditions as explained in certain cases by the annotation in Appendix 1. Respondents are also requested to respond to the questions set out in sections 4 & 5 in relation to the completeness of the conditions, their appropriateness and whether they achieve the stated objectives.

3. Consultation Procedure and Timetable

The consultation period will run from Monday 13th August to Friday 31st August 2001. Written comments should be submitted before 5.00pm on August 31st to:

Office of Utility Regulation
Suite B1 & B2,
Hirzel Court,
St. Peter Port,
Guernsey GY1 2NH.

Email: info@regutil.gg

All comments should be clearly marked “Comments on Postal Licence Conditions Consultation Document”

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document. In line with the policy set out in Document OUR01/01 – “Regulation in Guernsey; the OUR Approach and Consultation Procedures”, the Director General intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

The Director General regrets that she is not in a position to respond individually to the responses to this consultation, but she proposes to issue a response to the consultation, including published licence terms and conditions in September 2001.

4. Background

4.1. Legislation

The Post Office (Bailiwick of Guernsey) Law, 2001 (“the Postal Law”), and the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“the Regulation Law”) together provide the legislative basis for the regulation of postal services in Guernsey from their commencement date which is expected to be 1st October 2001.

The Postal Law provides that a range of postal activities do not require licensing, ranging from personal private delivery to deliver of court documents and banking instruments³. However, any postal services that are “reserved services” can only be provided in accordance with a licence issued by the Director General. The Law provides that reserved services may be set out in an Order made by the Director General⁴.

This structure is designed to provide the Director General with a framework similar to that in neighbouring jurisdictions, within which she can manage the twin objectives of:

- ensuring the continued provision of a universal postal service throughout the Bailiwick; and
- facilitating the development of a vibrant and competitive postal sector in Guernsey to deliver efficient, high quality and good value services to customers.

4.2. States Directions

The Regulation Law provides that the States of Guernsey may issue States Directions to the Director General in relation to:

- the scope of the universal service that should be provided in the postal sector in the Bailiwick;
- the extent of any exclusive privileges or rights in the postal sector;
- the identity of the first licensee in the postal sector; and
- any obligations arising from international agreements.

The States of Deliberation is scheduled to consider proposed Directions at its meeting of September 2001. The Director General anticipates that the States will define a universal postal service in the Bailiwick of Guernsey and require at least one licensee to deliver that universal service, direct that the first licensee with a USO shall be the successor company to Guernsey Post and direct that the Director General reserve services exclusively to that licensee to the extent necessary to meet the USO.

The remainder of this paper has been prepared on this basis, but is without prejudice to any final States Directions that the States may issue. Any final decisions following this consultation shall be adjusted to meet with Directions agreed by the States.

³ Section 1(2) of the Post Office (Bailiwick of Guernsey) Law, 2001

⁴ Section 9 of the Post Office (Bailiwick of Guernsey) Law, 2001

4.3. Scope of this and related consultations

The proposed licence terms and conditions addressed in this paper are designed to provide for the inclusion of the USO to be set out in States Direction, and are intended to apply to a set of services that will be known as the “reserved services”. In order to meet the USO, it is intended that the licensee shall have the exclusive right to provide these services in the Bailiwick of Guernsey. The Director General will define the reserved services by Order in accordance with section 9 of the Post Office (Bailiwick of Guernsey) Law, 2001.

Therefore for the purposes of this consultation, the licence terms and conditions are assumed to apply to the successor to Guernsey Post and will give that company monopoly rights in the market for reserved services. This assumption informs certain decisions under section 5 of the Postal Law in relation to a finding of dominance in the market and these are addressed in Document OUR01/06: Proposed decisions under the Post Office (Bailiwick of Guernsey) Law, 2001.

5. Proposed Licence Structure

In preparing the draft licence conditions, the Director General is mindful of the need to balance the legislative and regulatory obligations that ensure the delivery of the USO, the obligations that will be placed on the USO licensee in order to ensure that a competitive market develops, and the need for the licensee to be able to operate in a commercial manner. The licence conditions therefore set out at a high level the obligations that the Licensee will be required to comply with. In many cases, more specific detail will be developed by the OUR in consultation and co-operation with Guernsey Post Office, and other interested parties as appropriate.

It is the Director General’s view that this approach will provide the flexibility to ensure that the needs of the Guernsey market can be met by tailoring the regulatory regime to meet the demands of a small island economy, while at the same time providing sufficient certainty and clarity as to the regulatory rules so as to encourage entry into the market by other operators.

The table below summarises the conditions contained in the draft licence.

Condition	Comment
1	Sets out the definitions which in turn define the scope of the licence
2 – 11	Sets out the scope and the characteristics of the Licence, the provisions relating to enforcement and the terms and conditions relating to suspension, revocation, renewal or amendment of the licence
12 – 17	Includes public service conditions, conditions related to consumer protection, service levels, integrity of the mail and international obligations.
18 – 22	Conditions relating to retail price control, cross subsidies, access to the Licensee’s facilities, separate accounts, selling practices, undue preference and unfair discrimination. These conditions will apply to operators who are found to be dominant in a relevant market.
23-24	Conditions designed to ensure fair competition in the market and prevent any misuse of data.

Q 5.1: Do Respondents consider that this range of conditions covers all relevant matters? If not, what additional conditions should be included and why?

Q 5.2: Do respondents consider that there are any conditions in this draft licence that are unnecessary? If so, which ones and why?

6. Conditions of Specific Importance

This section describes in detail the purpose and intent of some of the more complex licence conditions, which may be of assistance to respondents to the consultation.

6.1. Universal Service

Universal Service (Condition 12)

This condition ensures that the universal service obligation that may be defined in States Direction can be imposed on the Licensee by the Director General. The purpose of the condition is;

- to impose on the first USO licensee the requirement to provide the level of universal service that will be set out in the States Direction. This is expected to include a minimum level of service, defined with reference to deliveries and collections, at a uniform and affordable price to all users, irrespective of their location in the Bailiwick; and
- to provide for Licensee to defray the cost of the USO. This is appropriate as the licensee will be provided with a monopoly on certain services in order to ensure that it is possible to meet the cost of the USO.

Q 6.1 : Do Respondents consider these conditions will ensure that the States' policy on universal postal services will be met? If not, why, and what changes would you suggest to meet the objectives?

6.2. Public Service Conditions

Service Levels (Condition 14)

Many of the people of the Bailiwick rely entirely on Guernsey Post, as the incumbent operator, for the provision of their postal services and this is likely to continue to be the case for some time. Therefore the regulatory regime must seek to ensure that the operation and maintenance of the facilities and services continues at a sufficiently high level to meet the reasonable needs of the users of the service. This condition seeks to ensure that the Director General receives sufficient information to meet this requirement and monitor the company's performance in this regard.

Q 6.2: Do Respondents consider this condition is appropriate and helps to safeguard the interests of the postal users in the Bailiwick within a commercial but not fully competitive market? If not please give your reasons and suggest alternatives.

Consumer Protection (Condition 15)

Ensuring that consumers' interests are protected will be of critical importance to the Director General, so it is essential that the licensee is aware of its requirements to provide high quality service to its customers. In addition, rectifying service issues and dealing with complaints from users in a speedy and efficient manner will also be of importance. The Director General considers that a system should be in place to enable users address such issues directly to the Licensee in the first place. Therefore the requirement in this condition for the publication of a consumer code setting out the manner and means in which such issues can be brought to the attention of the Licensee, addressed and reported on, is seen as being a key ingredient in achieving this aim.

Q 6.3: Do Respondents consider this approach balances the needs of consumers and the duties of Licensee appropriately? If not please suggest alternative ways of achieving consumer confidence and high quality services?

6.3. Control of a Dominant Position and Fair Competition

Fair Competition (Conditions 18 - 24)

The USO Licensee will have a legal monopoly over certain services and therefore will have a position of some power in the market for those services. This group of conditions is intended to ensure that the Licensee does not abuse that power and behaves in a manner that does not impede competition in other parts of the market, and in particular that it does not behave in a way that might place one competitor at any disadvantage vis-a-vis another competitor.

Q 6.4: Do Respondents consider these conditions are adequate to ensure fair competition? Do you have any suggested additions, deletions or amendments and if so why?

7. Conclusion

In conclusion, respondents are requested to comment on the matters set out in sections 5 and 6 of this paper. It would assist in the consideration of responses if the question numbers in these sections were quoted in any replies. Respondents are also requested to comment on the conditions in the draft pro-forma licence as set out in Appendix 2, the intent and objective of those conditions as set out in Appendix 1, and the appropriateness of those conditions. Comments on any additional conditions, which respondents believe should be included, are also requested.

/ENDS

Postal Licence – Explanatory Note on Conditions

Condition No.	Heading	Purpose
1	Definitions	Sets out the meaning attributed to certain terms used throughout the licence document.
Part I		
2	Scope of the Licence	Establishes to whom the licence is issued, the nature of the licence, the requirements with regard to the control of the licensee and obligations with respect to any changes in control of the licensee that may take place.
3	Licence fee	Provides for the licensee to pay a fee for the licence.
4	Provision of Information	The provision of information to the Director General on request will be an important obligation. The information requested will enable the Director General to make determinations in the best interest of users and the market as a whole.
5	Compliance	Sets out that the licensee must comply with any and all directions issued by the Director General or as set down in law.
6	Modification	The licence should be viewed as a living document and changes may be required to be made to it over the term of the licence to take account of developments in the market. The Postal Law sets out in more specific detail the process to be followed in making such modifications.
7	Exceptions and Limitations	While it is assumed that the licensee will at all times make every endeavour to comply with its licence and any directions given to it by the Director General, if such compliance is prevented by force majeure, the licensee must inform the Director General, set out the impact on its duty to comply with the Licence and set out how it intends to rectify the situation. The Director General will decide consider such matters on a case by case basis.
8	Enforcement and Revocation	This clause provides for the Director General to revoke the licence in accordance with the process and procedures set out in the Postal Law, and for the licensee’s obligations with respect to the provision of service to its customers at the time that any such

		revocation takes place.
9	Interests of the Bailiwick	Requires the licensee to take all reasonable steps to prevent its network and services from being used to harm the interests of the Bailiwick.
10	Term and Renewal	Provides for the length of validity of the licence and for the licensee to seek renewal of the licence. The term of the licence is 15 years.
11	Cessation of Services	Provides for the manner in which a licensee may cease service and the steps required of it in doing so. This is designed to ensure continuity of delivery of services for the licensee's customers.
Part II		
12	USO	Requires the licensee to provide the USO specified by States Direction and to comply with any direction from the Director General with regard to this condition as may be issued from time to time. It also provides for the licensee to defray the full cost of this universal service obligation
13	Services for the blind or partially sighted	Provides for the Director General to issue directions to the Licensee as to the terms upon which services will be delivered to this category of user
14	Service Levels	The licensee is required to provide a development plan setting out its targets for the ongoing development of the postal facilities and services, and a monitoring plan which measures achievement of those targets. This is designed to ensure the on-going improvement to the postal service to ensure that the Bailiwick is provided with the highest level of service.
15	Consumer Protection	Requires the licensee to publish certain information with regard to its services and conditions, the manner in which it will deal with customer complaints and the publication of a consumer code for the resolution of disputes. It also requires licensees to prepare a draft statement on its minimum service levels for customers.
16	Protecting the Integrity of the Mail	Requires the Licensee to provide details of the measures it is taking to minimise the risk to postal packets conveyed by it to theft, loss, damage or interference and the steps it is taking to reduce any such risk
17	International Obligations	Requires the Licensee to comply with such directions as may be issued relating to the Bailiwick's international obligations.

Part III		
18	Price Regulated Services	This condition requires the Licensee to publish details of new services or prices, discounts on services or special offers and submit information relating to the proposal to the Director General. The purpose of this is to ensure that any such changes/introductions are compliant with the requirement to be transparent, non-discriminatory and cost-justified.
19	Separate Accounts	To aid the Director General in ensuring compliance with other conditions relating to costs, the availability of the licensee to show that there is no below cost and/or cross subsidisation of any element of the business will be paramount.
20	Cross Subsidisation	This condition prohibits unfair cross-subsidisation and is intended to aid new entrants in assuring them that they are competing on a fair and equitable basis.
21	Undue Preference & Unfair Discrimination	This condition requires the Licensee to treat all classes of customers and competitors in a similar manner and provide them with similar terms and conditions.
22	Access to Postal Facilities	Access to the network and services of the Licensee may be important to aid the introduction of competition. This condition provides that the Licensee must negotiate with any other Postal Operator requesting such access.
Part IV		
23	Fair Competition	Sets out the manner in which the Licensee shall behave in respect to markets where it has exclusive rights.
24	Misuse of Data	Requires the licensee to handle information received in a manner that does not benefit it or any associated companies or in a manner that is anti-competitive towards other operators.

**Draft Pro forma
Postal Licence**