



Office of Utility Regulation

Regulation in Guernsey

Revised Consultation Procedures

Document No: OUR 04/01

January 2004

Office of Utility Regulation
Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: [0]1481 711120, Fax: [0]1481 711140, Web: www.regutil.gg

1. Introduction

When the Office of Utility Regulation (“OUR”) first started to regulate the Guernsey utility markets of post, electricity and telecommunications, the Director General (“DG”) published a set of guidelines describing the public consultation process that the OUR would employ in order to receive comments and suggestions from interested parties on the development and implementation of the regulatory regime.

This paper reviews and updates the original consultation guidelines that were published in August 2001 (Document OUR 01/01).

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“the Regulation Law”) provides overarching duties and objectives that guide the DG when she is carrying out her 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
- the environment 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 a key ingredient in complying with its legislative obligations.

2. The OUR Approach

2.1. *Principles*

While each of the three utility sectors have different characteristics and the development of competition in each is taking place at a different pace, the DG considered 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 achieved by creating, through regulation, an environment that allows competitive forces to operate effectively wherever feasible.
- To ensure that user and industry needs are understood and 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 telecommunication users 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 (current and future operators) 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 when markets operate more competitively.

The DG considers that these principles have operated effectively and has been given no reason to adjust them. The DG will continue to apply these principles to the operation of the regulatory regime in Guernsey.

2.2. Review of Consultation Process

The DG considers that it is of particular importance that there is a mechanism for the OUR to receive the views and comments of interested parties in a structured format. The OUR has therefore engaged in extensive public consultation since it was established. In 2001 the Office published 25 papers, in 2002 a total of 44 papers were published and in 2003 there were 39 papers made available on the OUR website. In each year approximately 8 to 10 of these documents were substantial consultation papers where views were requested from the relevant industry, customers or the public in general on key issues of importance in the regulatory regime.

The DG considers that the consultation process described in Document OUR 01/01 and used extensively since the Office was set up, has operated effectively and efficiently. In particular it has provided sufficient flexibility to ensure it can meet the needs of a wide range of consultation topics while providing clear guidance to participants in the process. It also afforded interested parties an opportunity to gain confidence in the process and was appropriate for the stage of development of the markets in 2001.

However, the DG considers that the consultation process should now be reviewed and updated with respect to the manner in which responses to consultations are made available. In Document OUR 01/01 the DG stated:

“In accordance with the Regulation Law, information provided to the Director General is confidential but may be revealed in certain circumstances, including when the consent of the person giving the information is obtained, or where the disclosure of the information enables the Director General to carry out her functions. The Director General believes that an open and transparent consultation process with a wide range of views will be invaluable to her in carrying out her functions and making decisions that are in the interests of the Bailiwick. Therefore she proposes to make all responses received available for inspection at the Offices of the OUR and submission of a response 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 clearly mark such material confidential in their submissions if they do not wish it to be made public.”

During the first two years of operation of the OUR this mechanism provided transparency of responses to consultation papers in that interested parties could gain access to all non-confidential responses at the OUR's offices. At the same time it kept down the administrative overhead of making the information available, thus minimizing costs for the OUR.

However, the OUR now has the resources and processes in place to be able to make non confidential responses to consultation documents available electronically on its website. This is a practice used by other regulators and statutory bodies and clearly provides easier access to the information for any party with access to the internet. It ensures that the views of responding parties are available in full and therefore the response to the consultation can be clearly seen in the context of those views. It also improves access to the consultation responses being considered by the OUR as it will reduce the need for interested parties to visit the OUR's offices.

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

2.3. 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 four 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. However, documents in other formats will be accepted.

In accordance with the Regulation Law, information provided to the Director General is confidential but may be revealed in certain circumstances, including when the consent of the person giving the information is obtained, or where the disclosure of the information enables the Director General to carry out her functions. The Director

General believes that an open and transparent consultation process with a wide range of views will be invaluable to her in carrying out her functions and making decisions that are in the interests of the Bailiwick.

Therefore she proposes to make all responses received available by publishing them in .PDF format on the OUR website (www.regutil.gg). To facilitate this, respondents are invited to submit their response in .PDF format. Where it is submitted in an alternative format, the OUR will convert the document to .PDF format and publish it on the website in that format. 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 clearly mark such material confidential 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 decision. A response to the consultation will 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, the OUR response to them and where decisions are made, provide reasons for the decisions. The OUR will at the same time publish the responses received to the particular consultation.

3. Conclusion

The DG is grateful for the continued cooperation of interested parties in helping to shape the regulatory regime. Participation in the consultation process from all interested parties, including consumers, businesses, utility service providers and other affected parties is welcome and indeed invaluable to the OUR in carrying out its functions.

The principles and procedures set out in this document are designed to assist and facilitate this and all parties are invited to actively participate.

/END