



Office of Utility Regulation

## **Regulation in Guernsey**

### **The OUR Approach and Consultation Procedures**

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# 1. Introduction

This paper describes the new regulatory framework for utility services in Guernsey and sets out the approach that the Director General of Utility Regulation (“the Director General”) proposes to take in developing that framework.

The need for a new regulatory regime for utilities recognises that Guernsey, although small in international terms, is operating in a global environment. As barriers to trade in most businesses are disappearing, so also are barriers to trade in utility services. Throughout neighbouring jurisdictions, in particular the UK and the rest of Europe, utility markets are changing fundamentally. Old monopoly models are breaking down and competition is bringing real benefits to customers and economies.

The States of Guernsey has recognised that the Bailiwick is not immune from these forces and has decided to adopt a pro-active approach by updating and restructuring utility services in Guernsey so as to take the best features from other changing models, adapt them to suit the Guernsey environment and provide a backdrop against which Guernsey’s strategic and essential utility services can be developed and sustained.

The Director General and her Office (the Office of Utility Regulation or “OUR”) work within the framework of the legislation set out by the States of Guernsey and within overall policy set out by States Directions to

- ensure that Guernsey consumers of utility services receive the best possible in price, choice and quality utility services; and
- to facilitate the development of vibrant, sustainable utility sectors in Guernsey that can underpin and contribute to the overall economic and social prosperity of the Bailiwick.

As well as describing the Director General’s approach to developing regulation in Guernsey, this paper gives an overview of the new legal package for each of the three utility sectors of telecommunications, post and electricity and sets out guidelines on the consultation process that the Office will run in order to receive comments and suggestions from interested parties to help her formulate the policies of her office.

## **2. Background**

### **2.1. The Regulation Laws**

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001<sup>1</sup> (“the Regulation Law”) provides overarching duties and objectives that guide the Director General 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 Director General acts in a way that is fair, impartial, independent, timely, transparent and objective. One of the purposes of this paper is to describe processes and procedures that the Director General proposes to put in place to meet these requirements.

Finally, the Regulation Law provides that the States of Guernsey may issue States Directions to the Director General on key issues of policy. These Directions provide further guidance to the Director General in regulating the markets.

### **2.2. Telecommunications**

The Telecommunications (Bailiwick of Guernsey) Law, 2001<sup>2</sup> (“the Telecoms Law”) sets out in some detail the role and functions of the Director General in the telecommunications market in Guernsey. This is supplemented by two States Directions which address the following points:

- The telecommunications sector in Guernsey shall be opened up to competition within three years<sup>3</sup>;
- At least one operator in the Bailiwick of Guernsey must be required to provide a Universal Service Obligation which includes connection to and services over the telecommunications network at any geographic location in the Bailiwick at uniform and affordable prices<sup>4</sup>,

Furthermore, a recommendation will be made to the States at its September meeting that the first licensee to be obliged to provide a Universal Service shall be Guernsey Telecoms Limited, the company that the States proposes to establish to take over the functions of the States Telecommunications Board from 1<sup>st</sup> October 2001.

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<sup>1</sup> Billet d’Etat No. I, 2001

<sup>2</sup> Billet d’Etat No VI, 200:

<sup>3</sup> Billet d’Etat No VI, 200: “States Board of Industry – States Directions on the Regulation of the Telecommunications Sector”

<sup>4</sup> *ibid*

Therefore the structure of the telecommunications sector in Guernsey is expected to include a dominant licensee (the former incumbent), and other new entrants into the market. The framework recognises the need in this type of asymmetrical market, to ensure that there is fair play, no unfair discrimination or abuse of a dominant position and that there is a level playing field so that new licensees in the market can compete.

Within these parameters the Director General will seek to promote the economically efficient operation of the telecommunications industry in Guernsey, while protecting the interests of consumers in Guernsey.

### **2.3. Post**

The Post Office (Bailiwick of Guernsey) Law, 2001 addresses the role and functions of the Director General in the postal sector and, once again, the States of Guernsey may issue States Directions to the Director General on key issues of policy. The Director General understands that a recommendation will be made to the States at its September meeting to issue three directions in this sector, providing that:

- at least one operator in the Bailiwick of Guernsey must be required to provide a Universal Service Obligation which includes daily delivery and collection on six days per week
- the Director General may reserve to the Universal Service Provider the exclusive right to provide certain services (the “Reserved Area”), insofar as this is necessary to ensure that the Universal Service is maintained, and
- the first licensee to be obliged to provide a Universal Service shall be Guernsey Post, the former States run postal service.

Within these parameters the Director General will seek to ensure the continuing provision of the universal postal service in the long term, while securing the freedom to provide competitive services in the sector through gradual liberalisation of the postal market. The Director General also intends to ensure that the framework encourages and facilitates postal service providers to become more efficient and responsive so as to ensure that high quality affordable postal services are maintained throughout the Bailiwick.

### **2.4. Electricity**

The Electricity (Guernsey) Law, 2001 applies only to the Island of Guernsey and it sets out details of the Director General’s functions in this market.

The primary legislation in this sector sets out a public supply obligation that requires all public supply licensees to provide connection to and supply from the electricity network at prices to be approved by the Director General. This equates to the requirement to provide a universal service in post and telecommunications. In addition, the Director General understands that the States will consider issuing two further directions providing that:

- The first public supply licensee shall be the States Electricity Board, the former State run electricity undertaking, and

- Competition shall be introduced in the electricity market in the following way
  - The generation market in electricity shall be opened up to competition immediately and the Director General may issue licences for this activity;
  - The provision of the electricity conveyance network shall remain within the exclusive privilege of the first licensee for a period of 10 years when it shall be reviewed; and
  - The Director General shall assess the effects of introducing competition into the supply market along the lines of European measures and will make a recommendation to the States on the introduction of such competition.

These Directions will be considered at the States September meeting. As with the telecommunications market, this market will therefore contain an incumbent player with a dominant position. The framework will seek to ensure that there is fair play, no unfair discrimination or abuse of a dominant position and that there is a level playing field so that new licensees in the market can compete in the liberalised sectors.

Within these parameters the Director General will be looking at ensuring that the electricity market in Guernsey gains all possible benefits from developments in other energy markets while protecting the sustainability and reliability of electricity in the Guernsey market and ensuring the interests of consumers are protected.

### **3. The OUR Approach**

#### **3.1. Principles**

While each of the three utility sectors have different characteristics and the development of competition in each on is taking place at a different pace, the Director General believes that certain overarching principles in how her Office regulates the market can apply to all sectors. Therefore she intends to develop a framework that accords with the following principles:

- 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 Director General 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 Director General'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.

### **3.2. Consultation Process**

Of particular importance during this intense period of development, is a mechanism for the Director General to receive the views and comments of interested parties. Therefore the Director General proposes to engage in public consultation where appropriate in relation to the exercise of her functions. 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, all consultation papers will be made available on the OUR website and in hard copy 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 three to 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.

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.

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, again 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.

## **4. Conclusion**

The establishment of a new regulatory regime for Guernsey utilities is a significant and important development. The OUR is charged with implementing that regulatory regime and developing it in a way that is in the best interests of the Bailiwick of Guernsey while at the same time taking account of best practice elsewhere.

Participation in the consultation process from all interested parties, including consumers, businesses, utility service providers and other affected parties is welcome and indeed essential to achieve this. The principles and procedures set out in this document are designed to assist and facilitate this and all parties are invited to participate.

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