



Office of Utility Regulation

# **Telecommunications in Guernsey**

Licensing Framework for a Competitive Market

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Report on the Consultation Paper

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**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](http://www.regutil.gg)

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# 1. Introduction

In August 2001, the Director General of Utility Regulation published a series of consultation papers in relation to the introduction of a new regulatory framework for the telecommunications market within the Bailiwick of Guernsey. This report deals specifically with the issues dealt with in the consultation paper OUR 01/02 entitled “Telecommunications In Guernsey – Licensing Framework for a Competitive Market”. That paper covered, inter alia;

- The telecommunications networks and services to be licensed in the Bailiwick;
- The nature of the terms and conditions to apply to the various classes of licences;
- The services to be exempted from a licensing requirement; and
- The timing for the future development of the licensing regime.

This report sets out the Director General’s conclusions following detailed consideration of the responses received.

This report is structured along the lines of the consultation document and each section will summarise the matter consulted upon, the responses received and the Director General’s consideration of the matter.

Three organisations/individuals responded to the consultation, as listed below:

- ActNow
- Guernsey Telecoms
- Newtel

Deputy Roy Bisson also provided comments of a generic nature on this and related consultation papers.

The Director General wishes to thank those who have responded to this consultation document for their contributions in helping to shape the regulatory regime. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR’s office.

# 2. Summary

All respondents generally favoured the Director General’s proposals. However some specific comments or suggestion were received and they shall be addressed in detail later in this document. Based on the Director General’s further consideration of these issues, and such other information as is available to her, she now intends to proceed to introduce a licensing framework as set out in this report.

While this report sets out the Director General's decisions at this time, the development of the regulatory regime is an on-going task. The Director General believes that it is important in a sector that is subject to rapid technological change and market changes to keep all matters under review and ensure that the regulatory regime adapts to meet those changes.

### **3. Scope of Regulatory Framework**

#### **3.1. *Activates outside the scope of the Regulatory Regime***

The Director General, in Document OUR 01/02, listed certain services that are not licensable services because they are outside the scope of what is defined in law as licensable services or because they are exempted in those Laws. Those services that are explicitly exempted in the law are clearly defined and require no further comment. For those services which, by the nature of their definition, fall outside the scope for licensing the position is less clear. The Director General will therefore offer every assistance to any service provider that is unclear as to what the licensing arrangements for a particular service may be.

However, responsibility lies with the service provider to ensure that they are in compliance with the Telecommunications Law and the Director General recommends that they seek independent legal advice if they are unclear.

#### **3.2. *Activities within the Scope of the Regulatory Regime***

The activities that fall to be licensed under the Telecommunications Law include:

- The provision of telecommunications services to third parties, and
- The establishment, operation or maintenance of telecommunications networks that are used for the purpose of providing services to third parties or that are themselves provided to third parties for the provision of telecommunications services.

As a general guideline therefore, licensing is confined to telecommunications service and networks provided to the public. Given the rapid developments in technology in the telecommunications sector and on-going innovation in service provision, it is essential that the Director General considers applications on a case by case basis based on the information provided in application forms to decide whether a network or service falls within this guideline.

### **4. The Licensing Framework**

In developing the licensing framework for telecommunications, the Director General will be guided, *inter alia*, by the principles set out in the Law, the States Directions and the guidelines set out in Document OUR 01/01 "Regulation in Guernsey – the OUR Approach and Consultation Procedures".

## **4.1. Exemption by Order**

### **4.1.1. Principles**

The law provides that the Director General can exempt activities from the requirement to hold a licence. This can be done by order<sup>1</sup>. In OUR 01/02, the Director General proposed a number of criteria against which exemptions would be considered.

It should be noted that the making of exemption orders can include conditions, therefore the exemption from the requirement to hold a licence could be conditional on compliance with certain minimum requirements.

#### **Comments Received**

Two respondents commented on this proposal, both of whom were supportive of the general thrust. One respondent sought clarification that licensed operators would be allowed to disconnect equipment from the network where there is a potential risk to health or safety, or potential of damage to the network.

#### **Position of the Director General**

The Director General is mindful that operators should at all times take such steps as are necessary to protect the health and safety of persons coming in contact with the network. Insofar as this issue falls to be addressed within the regulatory regime (as opposed to general health and safety laws and rules), it has been considered in the context of the pro-forma licence conditions which have been published separately. The integrity of the network is also dealt with in the licence conditions. In particular, the issue of disconnections from the network is not pertinent to the matter of exemptions.

In light of the above the Director General makes the following Decision.

#### **Decision 4.1**

The Director General will consider exempting services from within the scope for licensing under the Telecommunications Act against the following criteria:

1. Is there a public interest concern that would require the licensing of the activity or service?
2. Are there public safety issues that would require licensing?
3. Are there economic reasons for using licensing controls?
4. Is there the prospect of competitive provision of the service or activity in the near future that would be enhanced or encouraged where entry into the market was simple and inexpensive?

The Director General will carry out an assessment on a case-by-case basis using these criteria as guidelines. However, the Director General reserves the right to take other relevant matters into consideration.

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<sup>1</sup> Sub-section 1(3) of the Telecommunications (Bailiwick of Guernsey) Law, 2001

#### 4.1.2. Proposed Exemptions

The Director General set out in Document OUR 01/02 a number of activities that are currently licensed by Guernsey Telecom under the Telecommunications Law, 1972 either by general or individual licence. The Director General stated that she proposed to exempt certain services from licensing.

##### **Comments Received**

Two respondents commented on this issue. One respondent, while agreeing with the proposal sought clarification that sales of CPE would also be covered by the exemption, as it felt this market has already been liberalised. The other respondent sought clarification with regard to the licensing body for ISPs as it felt without such clarification it could neither support nor disagree with proposals.

##### **Position of the Director**

The Director can confirm that it is not considered necessary to licence the sales of CPE equipment as it is not a licensable activity and this activity shall be exempted under the Telecommunications Law.

Where ISPs require a licence that licence shall be issued by the Director General. For the avoidance of doubt the Director General shall be the sole licensing authority for telecommunications activity within the Bailiwick.

##### **Decision 4.2**

The Director General shall, if needed, exempt the following activities from licensing:

- Receive Only VSAT (Very Small Aperture Terminals)
- The Installation, Operation and Maintenance of Customer Premises Equipment (CPE)
- The installation of internal wiring and equipment
- The Provision of ISP services covering such services as portal services, a gateway, or other content services such as information services where the ISP is not engaged in the provision of telecommunications services as defined in law.

#### **4.2. Licensing Framework**

The remaining activities that fall to be licensed under the Telecommunications Law are:

- telecommunications services that are provided to third parties and
- telecommunications networks that are used for the purpose of providing services to third parties or that are themselves provided to third parties for the provision of telecommunications services.

The States have already decided that the telecommunications market in Guernsey should be opened up to competition as early as feasible and in any case within three years. The States has also issued a Direction on the identity of the first person to be issued a licence containing a Universal Service Obligation (“USO”) following its September meeting, namely Guernsey Telecoms Limited.

Within this framework, the Director General has prepared and consulted on the licence text for the first USO provider (Document OUR 01/03: Telecommunications Licence Terms and Conditions – Public Consultation). That consultation addressed both mobile and fixed telecommunications licence terms.

This report sets out other categories of licences that it will be issued and the services and networks that will be covered by them. There will be further consultation on the application processes and the licence texts for these categories.

### **4.3. Categories of Licences**

The Telecommunications Legislation provides for the use of either class licences or individual licences. Interested parties were asked whether they agreed with the classification being proposed by the Director General and if not what other classifications would be appropriate and whether individual or class licences would be applicable to those categories. Section 5.3 of the consultation listed 6 categories of operators that may be licensed and sought comments on whether the groupings were sufficient and if not why. It also set out some explanatory detail on each category.

#### **Comments Received**

Three respondents commented on this issue. Respondents agreed in principle with the Director General's proposals. However one respondent was of the view that the option to create new categories in the future should not be closed off. In addition it was of the view that more use of the exemption provision could possibly be used for fixed telecommunications services and that mobile licensing issues needed to be examined as a matter of urgency. In addition a respondent felt that further information should be provided on the timetable for licensing new entrants.

Another respondent made the following points with regard to the groups proposed:

- Group 1 & 5 – service providers in both the fixed and mobile markets may wish to have access to numbers but not intend to build a network. Such a category should be provided for; and
- Group 2 – Operators that intend to build a network and also provide services is not covered by any of the groupings.

In addition they felt that the scope of the services covered by the first bullet point in Section 4.1.1 of the consultation document is too broad and suggested that no breakout be allowed. They also believed that all licensees in a given category should have the same terms and conditions. It further identified two instances where it believed class licences should be used; private mobile radio services and private radio paging services. This respondent had concerns also about the timing of the licensing of mobile services.

### **Director's Position**

The Director General agrees that the categories listed in the consultation document should be capable of being adjusted or added to as necessary in the future. However, she is mindful of the need to maintain a clear, easily understandable licensing regime and feels that this is best achieved with a small number of clearly defined categories of licensable activities, rather than providing for a separate category for each minor differentiating aspect of an operators business.

The Director General believes that the distinctions set out in the consultation document adequately reflect the types of licensed operator that may enter the market and is of the opinion that the types of additional groups being proposed by one of the respondents are in fact already met by this list.

The Director General believes that the scope of the services covered under bullet point 1 in Section 4.1.1 is sufficient but would be prepared to review the matter should any difficulties arise in implementation.

With regard to the mobile licensing issues raised by respondents, the Director General is mindful of the need to provide for a competitive mobile sector. She notes that this is a complex area and believes that the issues associated with its introduction need to be carefully considered and further consulted upon to ensure the regime is such that it supports a sustainable competitive market going forward. The Director General expects to publish more specific details on the timetable for the introduction of competition shortly.

### **Decision 4.3**

The Director General proposes that the following categories of organisations providing telecommunications services and networks will be required to obtain a licence. These are:

- Service providers offering fixed telecommunications services to third parties but not requiring access to numbers and not intending to build networks so not requiring access to land or frequency spectrum;
- Operators proposing to build fixed telecommunications networks and provide telecommunications services and potentially requiring access to land and frequency spectrum;
- Operators with dominance in a relevant market in Guernsey;
- Operators with a Universal Service Obligation (initially Guernsey Telecoms Limited);
- Operators providing mobile telecommunications services in Guernsey but not requiring access to numbers and not intending to build networks so not requiring access to land or frequency spectrum; and
- Operators providing mobile telecommunications networks and services requiring access to numbers, land or spectrum.

The licensing regime shall be modular in design allowing for the most transparent licensing process as possible.



## **5. Conclusion and Next Steps**

As was stated in the consultation document OUR 01/01, there is now a wide range of other matters that need to be addressed to move the Guernsey telecommunications market forward. A number of important events and decisions that underpin the development of the regulatory framework have been confirmed in very recent days and this provides a platform to address the issues necessary to advance the market.

Key decisions and events include:

- The approval of the commencement of the Regulation and Telecommunications Laws by the States at its meeting on 26<sup>th</sup> September, 2001 and the associated repeal of the existing Telecommunications Law of 1972;
- The legal establishment of the Office of Director General of Utility Regulation with effect from 1<sup>st</sup> October 2001 on foot of the States Decisions on 26<sup>th</sup> September, 2001 and the granting of powers and duties to the Office;
- The transformation of Guernsey Telecoms into a Limited company on 1<sup>st</sup> October 2001 (as approved on 26<sup>th</sup> September 2001);
- The publication of this and associated decision notices and reports by the Director General, in particular Document OUR01/18 and OUR01/19 which set out the terms and conditions that will be included in licences to be granted to Guernsey Telecoms Limited and the terms of exclusivity that will be contained in those licences;

With these elements in place, the Director General is now in a position to set out a programme of work that will progress the development of the market. This will be published on the OUR website shortly and will include work streams to address:

### **Licensing of new operators in the Market**

- Development of licence application processes and procedures for new licences in the telecommunications market;
- Development of Licence terms and conditions for fixed networks and services;
- The availability of numbers and carrier codes for new operators, and processes and procedures for allocation.

### **Licensing of Mobile Operators**

- Examination of the availability of frequency spectrum and co-ordination with the UK Radiocommunications Agency so as to maximize the benefits of this scarce resource for the Bailiwick;
- Development of licence application processes and procedures or competition for new licences in the mobile telecommunications market, including licences to operate 3G systems;
- Development of Licence terms and conditions for mobile networks and services;

**Interconnection**

- Development of terms and conditions for access to and interconnection with the fixed network;
- Development of terms and conditions for interconnection with the mobile network.

**Consumer Issues**

- Development of quality of service indicators;
- Development of price control mechanisms and levels

Work is already underway with regard to these issues and the Director General shall be consulting further on the matters above as needed and setting priorities for the demanding workload for the OUR, new entrants and the incumbent operator, Guernsey Telecoms.

**/END**