



Office of Utility Regulation

Licence Fees for
Telecommunications, Postal and Electricity
Licences

Information Document

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Licence Fees for Telecommunications, Electricity and Postal Licences

1. Summary

This paper provides notification of the fees payable in relation to the first licences in the post, electricity and telecommunications sectors in Guernsey that are to be granted in accordance with new regulatory legislation passed in 2001. The paper has been prepared following consultation with the parties that are expected to be affected by these fees, namely the current States Telecommunications Board, the States Electricity Board and the States Post Office Board.

The initial fees are designed to meet the costs of regulating these licensees only. The Director General considers that this is a sensible approach because a significant amount of the Office's work will relate to these three companies, particularly in the first year as the regulatory regime is shaped in each sector. Licence fees for other categories of licences, including fees payable on application for a licence, will be calculated based on the estimated costs associated with those categories and will be published along with application procedures for licences.

2. Background

2.1. *Legislative background*

The States of Guernsey is preparing to establish the Office of Director General of Utility Regulation under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 ("The Regulation Law") and empower that Office to regulate the three utilities of telecommunications, post and electricity.

Under section 4(1)(d) of the Regulation Law, the Director's functions include determining and prescribing the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and the interest and penalties payable in the event of a default in the due payment of the fees or levies. The Director General is also required to publish fees in accordance with section 6 of each of

- the Telecommunications (Bailiwick of Guernsey) Law, 2001 ("the Telecoms Law"),
- the Post Office (Bailiwick of Guernsey) Law, 2001 ("the Postal Law") and
- the Electricity (Guernsey) Law, 2001 ("the Electricity Law").

The fees or levies charged by the Director General are expected to meet the costs and expenditure of the Director General over the term of the licence in connection with the exercise of her functions and powers.

The Office is required to establish a fund known as the "Public Utilities Regulation Fund" in to which licence fees shall be paid and from which costs of the office shall be paid. The Office is also required to maintain proper accounts, have the accounts independently audited and submit the audited accounts along with its annual report to the States.

2.2. Consultation

The Director General has calculated the cost of regulating the first licensees in the market for the first year of operation of the Office and has apportioned costs across the three sectors based on an estimate of the percentage of time and effort that it is anticipated will be required in each sector.

She has consulted with each of the three organisations on a number of operational issues relating to the licence fees and this information notice sets out her conclusions following consideration of the responses received.

The Director General would like to thank Guernsey Telecoms, Guernsey Electricity and Guernsey Post for their input.

3. Licences Fee Structure

3.1. Sectors

The Director General proposed to allocate the costs of running her office across the three regulated sectors in accordance with the amount of work that is expected to arise in each sector. An initial estimate of the division of workload between the three sectors is as follows:

| | |
|---------------------|-----|
| Telecommunications: | 50% |
| Electricity: | 30% |
| Post: | 20% |

The Director General intends to use internal mechanisms to measure the appropriate allocation of resources to each sector and to adjust the final calculation at the end of the year.

Comments Received

No comments were received on this approach

Director General's Position

Decision 3.1

The Director General will adopt the following percentages to allocate the costs of the Office of Utility Regulation across the three utility sectors in the first instance:

| | |
|---------------------|-----|
| Telecommunications: | 50% |
| Electricity: | 30% |
| Post: | 20% |

This will be reviewed following the end of the first year of operation of the Office when information on the true allocation of time and effort is available.

3.2. Mechanism for Calculating Licence Fees

The Director General proposed that she should charge a flat fee for the first calendar year of operation of the Office from 1 January to 31 December 2002, based on her estimates of the relevant costs of the Office for one year. For the period from 1 October 2001 to 31 December 2001, a pro-rata amount (i.e. one quarter) of the full calendar year fee will be charged.

Given the evolving nature of utility markets in Guernsey the Director General considered that this mechanism is the most simple to operate in the first year of the Office's activities and that it is transparent and straightforward for the Licensees.

However the Director General requested comments on whether it would be appropriate to consider basing the calculation of the licence fee on a percentage of turnover of the relevant companies.

The Director General also proposed to collect licence fees monthly in advance so as to best facilitate the cash flow position of both the Office and the companies and requested comments on this issue also.

Comments Received

One respondent to the consultation suggested that the fee should be set as a percentage of turnover as this provided more certainty for budget planning purposes. Two respondents stated a preference for a flat fee calculated on the basis of the costs of the Office. One felt that a percentage of turnover would be less certain for planning purposes, and the other expressed the view that the costs of the Office would not be related to the turnover of the company in any event.

One respondent also commented that the level of the license fee was too high and should be capped, and that the costs of the Office of Utility Regulation beyond a capped level should be met by the States. Another commented that every effort should be made to reduce the licence fee in future years.

One respondent preferred to make quarterly payments in advance, considering that monthly payments would impose an administrative overhead. The other two preferred monthly payments in advance.

Director General's Position

The use of a percentage of turnover to calculate fees is common in many jurisdictions where it is designed to spread the costs of running the Regulator's office across all licensees in proportion to their activities in the market. The license fees continue to be related to the costs of the Regulator's office but are merely expressed in manner designed to treat all players equitably. As such it may be a suitable mechanism for consideration where there are multiple licensees operating in the markets.

However, at this stage of development of the utilities markets in Guernsey, the Director General considers that the calculation of a flat fee for the first year's operation is preferable. This provides certainty for the companies in the first year.

It also provides a period during which wider consultation can be undertaken on the best mechanism to use in a market with multiple licensees during which other interested parties can comment.

Decision 3.2

The Director General will charge a flat licence fee to cover the first year's operation of the Office of Utility Regulation.

With regard to the level of the licence fees, these have been set so as to cover the minimum costs of the OUR in carrying out the statutory functions assigned to it by the Laws. The first year's licence fees also reflect the current stage of development of the three markets, the need for a considerable amount of setup work to establish new regulatory frameworks, the position of each of the companies in their markets, and their capability to provide the necessary information and develop the necessary frameworks to support competition and regulatory decisions

Having considered the comments received, the Director General intends to invoice the three companies monthly in advance for payment of the licence fees. The Director General does not believe that this will constitute an unacceptable administrative overhead and would expect that the companies will be in a position to deal with these payments as they would any other payments to suppliers.

Decision 3.3

The Director General will invoice the licensees monthly in advance for payment of the licence fees.

4. Reconciliation of Costs and Fees

4.1. Excess Licence Fee

In the event that the amount collected by way of licence fee in a particular year for a particular sector exceeds the amounts required to meet the purposes described in paragraph 1 above, it is intended that any such surplus shall not be retained by the Office of Utility Regulation. The Director General noted two possible mechanisms for balancing any excess fee collected:

- The excess could be offset against the following year's fee, or
- The excess could be refunded to the Licensees.

Any excess would be calculated on the basis of the final year end accounts of the Office of Utility Regulation. The final accounts for calendar year one will not be available in time for the calculation of the licence fee for calendar year two and therefore an offset may not be practical in the first half of calendar year two. However, an offset in the second half of calendar year two may be feasible. Similarly, any refund could not be made until the final accounts were available.

The Director General asked for comments on which of these two mechanisms would be most appropriate in the event of an excess fee having been generated.

Comments Received

All three respondents preferred a rebate mechanism.

One respondent commented that if other licences were granted during the calendar year, then a rebate should be made to the first licensees corresponding to the licence fee paid by the new operators.

Director General's Position

Decision 4.1

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|---|
| In the event that the Office of Utility Regulation collects licence fees that are greater than the amount needed to carry out the relevant functions assigned by Law, the Director General will refund the excess to licensees. |
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Fees for new licences will be set with a view to recouping the cost of carrying out the Director General's functions in the market place in relation to new licensees. As such these will be incremental costs and incremental fees. The fees collected from the first licensees are and will continue to be set at a level to recoup the costs of carrying out the Director General's functions in the market in relation to those first licensees and are not expected to be affected by the fees raised from other licensees. The mechanisms set out in this section will provide for a transparent rebate mechanism where excess fees have been collected from any licensee or licensees in a particular category.

4.2. Shortfall in Licence Fee

If there is any shortfall in the Licence fee collected due to unanticipated costs, the Director General will consider making up such a shortfall by:

- imposing an additional fee or levy on the licensees within the calendar year in which the shortfall arises; or
- obtaining short term funding and increasing licence fee or levy in the following calendar year; or
- seeking loans or grants from the States in accordance with section 10 of the Regulation Law if appropriate.

The mechanism to be used will depend on the nature and size of any shortfall and will be decided on a case by case basis.

No comments were received on this issue.

5. Penalties

The requirement to pay Licence fees will be included in the relevant licences and therefore a failure to pay a fee will constitute a breach of licence. There are various remedies available to the Director General where there is a breach of licence and without prejudice to those remedies, or any other remedies under the Licence or the Laws, if the Licensee fails to pay any amount due by the due date, the Director General proposed that the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the

published base rate of the Bank of England. This is included in the draft licence terms and conditions published for public comment.

There were no comments in response to this issue in this paper.

6. Licence Fee Levels

The following are the Licence fees that will be payable for the first calendar year of operation of the Office of Utility Regulation, that is for the period from 1 January 2002 to 31 December 2002. In the expectation that the States of Guernsey will direct the Director General to award the first licences in each sector to the successor companies to the States Post Office Board, the States Telecommunications Board and the States Electricity Board, these fees will be payable by those entities.

Telecommunications Licences: £300,000

This fee is for two telecommunications licences

- A fixed telecommunications network and services licence, and
- A mobile telecommunications network and services licence.

Electricity Licences: £180,000

This fee is for three licences:

- A generation licence
- A conveyance licence
- A public supply licence

Postal Licences: £120,000

This fee is for a single licence in the postal sector.

For the three month period in 2001 when the Office will be operating, i.e. from 1 October 2001 to 31 December 2001, the Licence fee will be set on a pro-rata basis, i.e. it will be set at one quarter of the above amounts.

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