

ICT 2022 - 1 - Consultation Proposed Outage Reporting Rules Update



Launch Date: 18 May 2022

Closing Date for comments: 17 June 2022



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A. Introduction

1. The Utility Regulation and Competition Office (the ‘**Office**’) is the independent regulator for the electricity, information and communications technology (‘**ICT**’), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Different decisions by the Office will affect persons and organisations throughout the country in different ways. It is therefore important that the Office makes regulatory decisions with the appropriate input from persons with sufficient interest or who are likely to be affected by the outcome of such decisions. Consultation is an essential aspect of regulatory accountability and transparency and provides the formal mechanism for these persons to express their views in this manner. The requirement for the Office to consult is mandated in its enabling legislation.
3. Under its enabling and foundational legislation, the Office has several principal functions. One of these principal functions is to protect the short- and long-term interests of consumers in relation to utility services. The Office may do so by making administrative determinations, decisions, orders and regulations.
4. In 2016 the Information and Communications Technology Authority (‘**the ICTA**’) introduced the Outage Reporting Rules (‘**the Rules**’), that related to outages impacting ICT Networks and Services.
5. In 2019 the Rules were updated to reflect the transition from the ICTA to the Utility Regulation and Competition Office and to introduce online reporting of outages.

Based on the experience obtained using the existing Rules, the Office reviewed the Rules and identified some areas that in the view of the Office require updating. The Office considers that the updates are necessary to better capture instances of outages on licensees’ networks to better enable the Office to determine whether any outages or repeated outages justify regulatory interventions or industry cooperation initiatives to prevent the recurrence of similar outages. Additionally, the inclusion of requirements to notify customers of outages will help keep customers appropriately informed.

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6. The Office therefore proposes to issue a determination which is intended to update the current Rules.
 7. The purpose of this consultation paper is to allow persons with sufficient interest or who are likely to be affected by the Rules a reasonable opportunity to comment on the proposed updates which are set out at Part C Proposed Changes and included in the draft determination on the proposed *Rules* at Annex 1.

B. Legal Framework

8. The Office is guided by its statutory remit in developing the draft Rules, notably:
9. **Section 6(1)(c)** of the Utility Regulation and Competition Act (2021 Revision) (***URC Act***) outlines that one of the principal functions of the Office, in the markets and sectors for which it has responsibility, is “*to protect the short- and long-term interests of consumers in relation to utility services...*”.
10. **Section 6(2)(d)** of the URC Act states that the Office, in performing its functions and exercising its powers under the URC Act or any other Act, may “*make administrative determinations, decisions, orders and regulations*”.
11. **Section 6(3)** of the URC Act states that ... “*the Office has power to carry on any activity which appears to it to be requisite, advantageous or convenient for or in connection with the performance of its functions or the exercise of its powers under [the URC Act] or any other Law.*”
12. **Section 7(1)** of the URC Act requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “*... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.*”
13. **Section 9(1)** of Information and Communications Technology Act (2019 Revision) (***the ICT Act***), states that ... “*the Office has power to do all things*

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- necessary or convenient to be done for or in connection with the performance of its functions under this Law.”*
14. **Section 9(3)(h)** of the Information and Communications Technology Act (2019 Revision) (**‘the ICT Act’**) outlines that one of the principal functions of the Office, in the markets and sectors for which it has responsibility, is *“to promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure...”*.
 15. **Section 72(1)** of the ICT Act states in part that, *“ICT service providers and ICT network providers shall use best endeavours to ensure that their ICT services and ICT networks are -*
 - (a) reliable*
 - [...]*
 - (b) provided with due care and skill; and*
 - (c) rendered in accordance with the standards reasonably expected of a competent provider of those ICT services and ICT networks.*
 16. Pursuant to **Condition 4.1** in the ICT licences it has issued, the Office has the power to examine any and all aspects of a Licensee’s business and can require the Licensee to provide it with information about the business upon reasonable notice.
 17. Therefore, it is the view of the Office that it retains the right to propose material amendments to the established Outage Reporting Rules when appropriate but after consultation.

C. Proposed Changes

18. The draft Rules are attached to this consultation document at Annex1. The proposed changes are summarised in the paragraphs below and highlighted in the draft Rules. The Office strongly encourages respondents to read the draft Rules prior to submitting comments on the draft Rules.
19. **Part 1: Basis and purpose.** This part has been expanded to include information on why and how the data collected through Outage Reports is used.

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20. **Part 3: Scope of these Rules.** An addition to this section introduces the differentiation between planned and unplanned outages. The existing Rules only provided for reporting of outages after they had occurred. However, planned upgrade or maintenance work may also disrupt an ICT Service or ICT Network. The Office expects to be notified of such work to ensure that it is carried out in a way to create the least impact on consumers. Also, the Office will be able to determine if several service or network providers are planning to carry out such work at the same time.
21. **Part 4: Definitions.**
- Part (a) has been renamed Unplanned Outages
 - A definition for Planned Outages has been inserted as part (b).
 - Part (c) (originally part (b)) has had hospitals and the Government Administration Building added to the list of Special Offices and Facilities. Additionally, reference to appropriate licence condition for reporting 9-1-1 outages has been updated.
 - Part (d) has been reformatted and the Cayman Islands Coast Guard and the Cayman Islands Regiment have been added to the list of organisations where a service outage would be deemed critical. Additionally, wording is simplified to make clear where outages are considered critical if affecting national security/emergency preparedness services and operations.
 - Part (e) now includes the link to the webpage for reporting outages electronically.
 - Part (f) adds a definition for Local IP Traffic.
 - Part (g) adds a definition for Subscriber.
 - Part (h) adds a definition for Urgent Planned Outages. Which are outages planned to commence within a short timeframe and which are necessary to resolve a network problem.
22. **Part 5: Unplanned Outage reporting requirements.** Apart from adding “Unplanned” to the title of this section, the criteria for determining whether an outage is reportable or not, have been moved to Appendix A. This has allowed the reporting criteria to be tailored to specific ICT networks, services and entities. This part has also been updated to include a requirement to notify customers of outages, where reasonable to do so.

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23. **Part 6: Planned Outage reporting requirements** have been added. A separate section was required for Planned Outages as reporting is expected to happen before the event whereas Unplanned Outages are reported after the event. This part also includes requirements for reporting Urgent Planned Outages.
 24. **Appendix A: Outage Reporting Criteria.** The thresholds for reporting outages have been updated and moved to this appendix which details specific events.
 25. **Part 7 (now part 8) Sanctions.** This part has been updated to include the current version of the URC Act.

D. Draft Determination (draft Rules)

26. The draft Rules can be found in **Annex A**.

E. Consultation Questions

27. Based on the above, the Office invites all interested parties to provide comments and input to the proposed changes and Draft Determination.

F. How to Respond to This Consultation

28. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Offices website here:
<http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>
29. The Office considers that because the draft Rules are published as part of this consultation, this consultation will be conducted as a single-phase consultation over a period of **thirty (30) days**. Where, upon review of the responses to the consultation, it becomes clear that a second phase of consultation is required, a further notice will be issued accordingly. As noted above, **section 7(1)** of the URC Act states that prior to issuing an administrative determination of public significance, the Office shall “*issue the proposed determination in the form of a draft administrative*

determination.” The Office considers the attached draft Rules to be a “*draft administrative determination*” for the purposes of **section 7(1)**.

30. All submissions on this consultation should be made in writing and must be received by the Office by **5 p.m. on 17 June 2022** at the latest.
31. Submissions may be filed as follows:

By e-mail to:
consultations@ofreg.ky

Or by post to:
Utility Regulation and Competition Office
P.O. Box 10189
Grand Cayman KY1- 1002
CAYMAN ISLANDS

Or by courier to:
Utility Regulation and Competition Office
3rd Floor, Monaco Towers II,
11 Dr. Roy’s Drive, George Town,
Grand Cayman
CAYMAN ISLANDS