



Caribbean Utilities Company, Ltd.
457 North Sound Road, P.O. Box 38
Grand Cayman KY1-1101
CAYMAN ISLANDS
www.cuc-cayman.com

Tel: (345) 949-5200
E-mail: llawrence@cuc.ky

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By email only to: consultations@ofreg.ky
Utility Regulation and Competition Office
PO Box 10189
3rd Floor, Alissta Towers
85 North Sound Road
Grand Cayman KY1-1002
CAYMAN ISLANDS

Re: E&U 2020 – 3 – Consultation Proposed Consumer Protection Regulations (E&U Sectors)

We refer to the above captioned consultation. Please find below the consultation response from Caribbean Utilities Company, Ltd. (CUC). This response uses the same drafting headers, acronyms and defined terms as the consultation document (Consultation). This response refers to the numbered paragraphs of the Consultation using the symbol §, so §1 refers to paragraph 1, whereas commentary to the drafted Regulations is referenced using regulation, sub-regulation, paragraph and sub-paragraph, as appropriate.

B. Legal Framework

§ 5-10 CUC notes the legal framework outlined in the Consultation, and further provides that in addition to those Sections cited in Law, the legal framework, as relevant to the Consultation, also comprises:

- The Electricity Law (2008);
- The General Regulatory Principles Schedule to the Electricity Sector Regulation Law (2019) (the “ESR Law”);
- The Consultation Procedure Guidelines (OF 2017 - G1 - Guidelines);
- The Electricity Transmission and Distribution Licence granted to CUC on 3 April 2008, containing an exclusive licence for the Service Territory for 20 years; and,
- The Electricity Generation Licence granted to CUC on 20 November 2014 containing a non-exclusive licence for 25 years.



C. Draft Consumer Protection Regulations Objectives

§ 11 CUC notes that the terms and conditions under which services in relation to CUC are provided to Consumers are already regulated. The Office has reviewed and approved original drafting and revisions in respect to:

- The Transmission and Distribution Code (Rev. 2015);
- Customer Service Code (Rev. 2018);
- Demand Rates Terms of Service (Rev. 2018); and,
- Electric Vehicle Charging Rates Terms of Service (Rev. 2018),

which provide for service and quality standards. CUC raises that it is perhaps the intent of this paragraph to convey the objective is for the regulation for terms and conditions under which services in relation to E&U sectors are provided by prescribing standardized quality standards.

§ 20 CUC notes that the applicability of the proposed drafted Regulations to roaming plans of particular Stakeholders is unclear.

D. Consultation Questions

Question 1: What are your views on Part 2 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers have adequate information to make informed decisions when selecting E&U services and E&U Sectoral Providers? If not, please explain in detail the changes required to achieve this objective.

CUC Response: CUC supports generally the Regulations in Part 2 – Provision of Information. However, CUC wishes to raise concerns and is seeking clarification in respect to the below-noted aspects of Regulation 3.

CUC notes in respect to Paragraph 3(2)(c) that it is unable to locate a determination or finalized or published Truth in Advertising Rules following the consultation responses published following the March 2019 issuance of OF 2019 – 1 – Truth in Advertising Rules. Accordingly, despite in principle supporting TIA rules, CUC questions the appropriateness of this paragraph's inclusion in the Regulations.

CUC seeks clarification in respect to the term “customer service location” referenced in Paragraphs 3(4)(c) and 3(4)(d), which is not defined in Part 1, Regulation 2. CUC would make recommendation that, for the avoidance of confusion, the term be revised to include “of the Sectoral Provider” to differentiate from any physical location which may provide a contracted service to the Sectoral Provider, which in part, may constitute an aspect of customer service, but is not the primary function of the location. As an example, CUC engages with Remote Payment Agents, the Caymans Islands Postal Service, and Class A Licensed Banks who may receive



Consumer payments on behalf of CUC but are required to refer any Consumer queries or complaints in relation to the Consumer's service provision by CUC to CUC for review and resolution. CUC would posit such locations do not constitute "customer service locations" as intended by these paragraphs to Sub-regulation 3(4) per the remit of their function.

CUC would also raise concern that Regulation 6 appears to be limiting the retention of Personal Data beyond those conditions and circumstances provided for in the Data Protection Law (2007). It is unclear why the Law itself is not sufficient to the matter and that additional regulation is necessary for a Sectoral Provider.

Question 2: What are your views regarding the means by which the Sectoral Providers will be obligated to ensure the provision of information under clause 3 of the proposed Draft Regulations?

CUC Response: CUC is supportive of the provision of information to its Consumers in respect to the details of the Services CUC provides Consumers and terms and conditions pertaining to the same. CUC already makes available to new and existing Consumers in a fully transparent and accessible manner its Licences, Terms and Conditions, rates, and any such forms, contracts, agreements, or other relevant public documents as may be applicable to a Consumer's agreement to purchase Services from CUC.

CUC notes that the Paragraph 3(3)(c) appears contrary to Sub-sections 3(6) and 3(7) of the General Regulatory Principles Schedule to the ESR Law, which states that "[a] licensee shall be entitled to recover all reasonable increases in costs that arise due to changes in the standard for service" and "[t]he level of service for each Island existing as at the date of the grant of the respective licence issued under the Law shall be used as the initial standard for service in the respective Island." Insofar as the Office is proposing Regulations that would necessitate increases in service standards or provisions in excess of those previously established as at the grant of a licence, as it pertains to the issuance of information to Consumers, it is expected that the issuance of information would only be free of charge if the previous manner in which it were provided were also free of charge. CUC raises whether the intent of the paragraph is that the specific Consumer making the request would be able to obtain the information free of charge or that the manner in which the information is provided, where in excess of previously existing service standards, be done free of charge. CUC's position is that the latter would appear to be contrary to the General Regulatory Principles.



Question 3: What are your views on Part 3 of the Draft Regulations? Will the proposed regulations, in your view, enable E&U Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously? If not, please explain in detail the changes required to achieve this objective.

CUC Response: CUC is supportive of a robust and accessible mechanism by which a Consumer may provide complaints and have any such complaints reviewed and considered in a fair, consistent, and expected manner. Accordingly, CUC is supportive of the intent of Part 3 of the drafted Regulations. In review, CUC would offer the following additional commentary in respect to the draft Regulations.

In respect to sub-paragraphs 7(1)(a)(i) and 7(1)(a)(ii), CUC would seek to confirm that it might meet the requirements to receive complaints in person or by telephone even if there is a restrictive procedure in place for doing so that would consider any such complaint not received unless it is in a prescribed recorded or written format to ensure accuracy and completeness on the part of the Consumer. CUC is of the position that receipt of spoken or informal complaints as it pertains to related Regulations without procedure requiring a particular medium or method of transmission might raise the potential for error in substance or incomplete reporting.

CUC would seek clarity from the Office in respect to the type of complaint envisaged in respect to Consumers prior to entering into a contract as per Sub-regulation 7(2), or who do not have existing direct contractual relationship with a Sectoral Provider. In respect to the same, CUC is questioning the ability or obligation of a Sectoral Provider to remedy such complaints or appropriateness to do so in all circumstances. CUC further seeks clarification as to the phrase “for up to six (6) months **not determined** after the end of his/her contract with the Sectoral Provider” (emphasis added).

CUC notes that in respect to paragraph 9(i) not all billing errors may be feasibly “corrected within two (2) Business Days” dependent upon the nature of the error and any requisite review to determine the correction required. Certain billing errors could occur of a technical nature which would require more extensive investigation for correction. It is suggested that where a billing error has taken place that cannot be corrected within two (2) Business Days that the Sectoral Provider provide communication to the Consumer acknowledging the error, the need for correction, and the anticipated timeline by which the Consumer may expect the correction to be completed.

CUC further notes in respect to paragraph 9(i) that it appears obligating a Sectoral Provider to reflect changes in the “next Bill” precludes the ability of the Sectoral Provider to provide the Consumer with a corrected “current Bill” in relation to any billing error corrections. CUC asks if this is the intent of the Office or is it of the Office’s position that “next Bill” may also constitute a corrected version of the “current Bill?”



CUC would recommend that sub-paragraph 9(i) where reference is made to billing corrections being made in “(2) Business Days...” add “be amended to add “In cases where there is a metering inaccuracy, the correction shall be made within 15 (15) Business Days.” to allow appropriate time to schedule an inspection of the service, testing and replacements of any defective equipment.

CUC would recommend that sub-paragraph 9(j)(ii) be amended to “the personal circumstances of the Consumer making the Complaint in so far as these are known to the Sectoral Provider, and where appropriate and relevant;” so as to ensure that remedies be offered in a non-discriminatory manner. CUC is of the opinion that whilst it would be appropriate to consider the personal circumstances of a Consumer in remedying certain Complaints, insofar as a complaint arises in respect to an error on the part of Sectoral Provider, the remedy should be issued in an equitable and fair manner to the Consumer irrespective of the particular Consumer’s personal circumstances.

CUC notes that paragraph 9(l) and subparagraphs 9(l)(i) and 9(l)(ii) do not account for instances in which the closure of a complaint may not be to the satisfaction or agreement with a Consumer, but whereby there is no further recourse or remedy available. CUC suggest that reference be made to Regulations 12(2) and 13 under which the complaint may be considered closed by the Sectoral Provider.

CUC raises concern in respect to Regulation 11(a-f) in respect to “Verbal Complaint[s]” insofar that CUC is of the position that verbal complaints are potentially insufficient to provide accurate and complete information to review and process the complaint. CUC would raise for consideration that Complaints be redefined generally into “Formal” and “Informal” or similar dichotomy, whereby “formal complaints” would be processed in respect to Regulations in Part 3. It is the opinion of CUC that formal complaints need be received in a recorded manner, whether written, transcribed, or otherwise in a format that leaves no ambiguity or translation on the part of the Sectoral Provider in respect to the intent and contents of a complaint issued by any Consumer. This is not dissimilar in principle to the requirement by the Office in respect to responding to this Consultation, or consultations generally. In the Office’s Consultation Procedure Guidelines, Section G Paragraphs 24 & 25 state that, “Written responses... allow persons to fully express their views, and explain why they hold the views they do. Written responses also allow respondents to support their statements with evidence...” and that, “[t]he importance of written responses... is that they allow the [recipient] to keep an accurate record of the position of the... respondents.” These characteristics of written responses are no different in respect to receiving complaints. CUC opines that a Consumer may elect to raise an informal complaint in a verbal manner, but to formalize the complaint for processing would be required in procedure to submit the formal complaint in a recorded fashion. The Sectoral Provider would be, as a matter of course, unrestricted in its ability to resolve, remedy, or otherwise close any formal or informal complaint at the initial point of contact, but it is the position of CUC that in such proposed circumstances only formalized complaints be further processed and recorded in respect to this and other regulations in Part 3.



CUC further notes that the overall timelines proposed in Regulation 11, in particular paragraphs (d) and (e), do not refer to any timeframe associated with referral to a suitably qualified senior employee for internal review, as prescribed by Regulation 9(m) of a proposed resolution where the Consumer is not in agreement with the proposed resolution. CUC questions if the intent by the Office is that any internal view process be fulfilled within the no more than thirty (30) days of receiving a complaint to providing a proposed resolution, or whether such internal review would follow the issuance of a proposed resolution?

CUC would also recommend that after Regulation 11 (e), (ii), add “(iii) the actions necessary involve upgrading or replacing infrastructure that is not readily available and can be reasonably completed in the period established in 11 (e).” This is to account for necessary actions including materials that are not available in stock on island and/or where additional engineering, procurement and construction is required to develop and implement a solution.

CUC notes that Sub-regulation 12(2)(a-b) would allow a senior member of staff to make a determination if a complaint is frivolous, vexatious, or where the Sectoral Provider can do nothing more to assist the Consumer to resolve the complaint. CUC would propose that complaints raised in respect to items of the Sectoral Provider’s service, rates, or structure duly reviewed and previously approved by the Office, to which there is no remedy or resolution the Sectoral Provider may offer the Consumer, should also be dispatched in the manner set forth within 12(2)(a-b), i.e. without need for the involvement of a senior member of staff.

CUC would seek clarification in respect to Regulation 14 as to why the preferred method of written communication would be to a Consumer’s postal address, and that email would only be utilized if a postal address is unavailable. CUC would generally think that written communication issued to a Consumer’s email address would be the most expedient manner in which such notification might take place, with postal address to be utilized in the event that an email address is unavailable, or whereby one or both of the unsuccessful attempts to communicate with the Consumer were by email.

It is of opinion of CUC that the current definition in Part 1, Regulation 2 for “Complaint” in respect to Regulation 15 is overly broad. As previously expressed, CUC is of the opinion that the definition for complaints should be narrowed into some dichotomy of a “formal” or “informal” complaints, and further to allow a Sectoral Provider to receive complaints in a prescribed manner that would not be overly burdensome in respect to recording, monitoring and tracking purposes. Noting that the manner in which the Regulations currently treat complaints, it is not unreasonable to assume that additional resources in excess of those currently allocated to reviewing of complaints under CUC’s existing procedure (as previously reviewed and approved by the Office) would be



necessary to meet the requirements of Regulation 15. As an illustrative example of this concern, under the drafted Regulations, the expression of dissatisfaction with the rates, rate structure, exclusivity of Transmission and Distribution Licence for Grand Cayman, or similarly approved structural characteristics of CUC would need to be treated with the same process and resources as complaints in respect to instances of administrative or other error on the part of CUC or other activities which may have led to material damages for a Consumer. Referring again to sub-sections 3(6) and 3(7) of the General Regulatory Principles Schedule to the ESR Law, this cost would be borne by Consumers. CUC is of the position that by appropriately narrowing tracking, monitoring, and reporting requirements in respect to more formalized complaints, the existing process by which complaints are reviewed and resolved would be sufficient to meet the requirements without adding unnecessary costs.

CUC notes that in respect to paragraph 15(1)(j), the record of when an action is due to be completed as listed in sub-paragraphs i-iv is already prescribed in other regulations and therefore only the completion date need be recorded. It is expected that in any analysis done by the Office, the Office is capable of determining whether the action date is compliant with the timelines established in the Regulations.

CUC notes that paragraphs 15(3)(a) and 15(3)(b) appear to be overly restrictive in that they do not account for fair and lawful processing for other purposes that are allowed under the Data Protection Law (2017), such as disclosure to obtain legal advice.

CUC is seeking clarification in relation to Sub-regulations 16(2) and 16(3) as to whether the Office is intending to require complaints to be accepted in a language other than English, as this is not explicitly stated and therefore CUC is unable to establish a position to respond.

There is no prescribed period listed in Regulation 15 for the retention of complaint records. CUC recommends a period of 3 years after the complaint has been closed or otherwise responded to by CUC.

Question 4: What are your views on the proposed time periods in relation to when consumers can file a complaint, as outlined in clause 8?

CUC Response: There does not appear to be reference to proposed time periods in relation to when consumers may file a complaint in Regulation 8. CUC is unable to answer the question as explicitly provided; however, it is with concern that the Regulations in Part 3 do not appear to provide for any limitation for a complaint to be issued except for sub-regulation 7(2), in which a Sectoral Provider may not be required to receive a complaint from a Consumer after 6 months from the termination of a Consumer's contract. Given that it is not unrealistic for CUC to have contracted Consumers in excess of multiple decades, CUC is of the position it would be prudent



to include additional limitations for contracted Consumers in relation to receiving Complaints pertaining to the totality of that Service contract, similar to existing law (such as 6 years).

Question 5: What are your views on Part 4 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, simple and fair terms and conditions for the provision of products and services? If not, please explain in detail the changes required to achieve this objective.

CUC Response: CUC is broadly supportive of the intent in respect to Part 4 of the draft Regulations and is of the position that clear, simple, and fair terms and conditions is of benefit to Sectoral Providers and Consumers in the E&U Sector. CUC would, however, make the following comments in respect to particulars of Part 4 of the draft Regulations.

CUC would raise its concern in respect to Sub-regulation 17(3), which would void contractual provisions limiting liability of the Sectoral Provider for damages caused to the Consumer's person or property. CUC would recommend it be modified to "purports to limit the liability of the Sectoral Provider for damages caused to the Consumer's person or property as the result of negligence or bad faith is void" or similar. This is a departure from normal contractual terms and there are examples whereby a Consumer may suffer damages to their person or property through the normal service provision by CUC. Such examples might include transient voltage caused through normal grid switching operations leading to degraded or damaged equipment, sensitive equipment that might be damaged through the provision of service within the acceptable frequency provision range, or, in a most extreme example, where CUC may not be aware of a customer has strict medical requirements related to the provision of electricity, and yet the customer fails to provide with their up to date contact information, leading to the customer being harmed when CUC is unable to notify the person of a planned or unplanned disruption of service. CUC would therefore question the appropriateness of this sub-regulation. Similar comment and concern is raised in respect to Sub-regulation 17(4) voiding any provisions limiting obligation beyond Force Majeure. Both sub-regulations appear to be a departure from standard contractual provisions with no rationale provided by the Office for doing so, which would appear to be contrary to the General Regulatory Principles, in particular Section 6 – Promotion of predictability.

CUC raises concern that it would likely be unable to comply with Regulation 20 in full as written. Sub-regulation 20(2) would include all rate changes associated with the provision of electrical service to the material detriment of the Consumer. This would include any instance in which the total effective rate, through an overall change in fuel factor related rate components, might increase as the result of changes in the cost of determinants for those components. This would further include any rate adjustments resulting from provisions in the Transmission & Distribution Licence, most notably via the Rate Cap and Adjustment Mechanism. Historical undertakings with the Office would indicate that the provision of notice to a Consumer, as per Sub-regulation 20(1)(a) for any such rate changes encompassed in Sub-regulation 20(2) is not achievable as there is insufficient time from the receipt of formal approved from the Office for such change and the effective date



for the change. In such instances, CUC would, through no fault of its own, be unable to comply with Regulation 20 as written and would seek assurances from the Office that an exception be provided to the Regulation whereby any inability to provide no less than one month's notice of changes in pricing on account of the normal review and approval process by the Office would not constitute a breach of the Regulation.

CUC is of the opinion that Regulation 21 would have a chilling effect on the establishment of partnerships with third parties that could be beneficial to the Consumer as the Sectoral Provider would be required to bear the full burden and responsibility unilaterally for the performance or other characteristics of the third party. It is recognized that it would be beneficial for the Sectoral Provider to provide for service standards in respect to any such partnership; however, this would typically form part of the contractual relationship with the third party. If the Office has interest in such service standard provisions, the Office has the opportunity to comment upon and approve such contractual terms as part of the normal process for contracted service provision.

CUC raises concern that Sub-regulation 22(1)(b) would inappropriately increase overall risk to a Sectoral Provider, particularly in respect to Regulation 35 and any implicit accrued costs afforded to a Consumer in a post-paid service contract before the Sectoral Provider may restrict, suspend, or otherwise disconnect a service. It would instead be suggested that any limitation to the anticipated charges used to establish a security deposit be calculated on the basis of the general credit terms of the contract, which in this instance would exceed one (1) month by definition.

CUC would raise for consideration the inclusion of a new Sub-regulation that references Sub-regulation 22(4) whereby the repayment of any Security Deposit (or the balance then remaining) within ten (10) Business Days commences upon confirmation by the Consumer that their particulars in relation to undertaking successful repayment as held by the Sectoral Provider are correct and complete. It is the experience of CUC that upon closure of an account, it is not always the case that the Consumer has provided CUC with up-to-date details regarding the bank account or mailing address they may wish the Security Deposit (or balance remaining) to be paid into.

CUC is unable to provide a position in respect to Sub-regulation 23(1)(c) as it is unable to find the referenced Sub-regulation 3(8).

Question 6: Please provide your thoughts regarding the mandatory terms and conditions, that should be included in every contract, as outlines in clause 23(2).

CUC Response: CUC is unable to answer this question as explicitly listed, as Sub-regulation 23(2) pertains to the ability of a Sectoral Provider to require a fee from a Consumer requesting an additional printed format copy of a contract as referenced in 23(1)(b). It is assumed the reference is intended to be to Regulation 17, in which case CUC has no concerns in respect to the mandatory



terms and conditions to be included in every contract other than those already listed in response to Question 5 associated with Sub-regulations 17(3) and 17(4).

Question 7: What are your views on Part 5 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.

CUC Response: CUC is supportive of ensuring that billing is transparent, complete, accurate, and to the extent possible, easy to understand. To that extent, CUC supports those aspects of the drafted Regulations which are supportive of ensuring the Consumer's right of access to their billing information and all matters pertaining to charges related to the Consumer's contracted service. Accordingly, CUC is generally supportive of Part 5 of the drafted Regulations. CUC would offer for consideration the below additional observations in respect to the particular regulations within Part 5.

CUC raises concern that the impact of Regulation 33 would inappropriately preclude a Consumer from being charged for services or products consumed where an error may have taken place or been raised to the attention of a Sectoral Provider greater than three (3) months prior. This would in effect shelter any consumer, whether the failure to bill for the product or service in the period in question was the result of an error on the part of the Sectoral Provider, the Consumer, or any other cause, from charges that would reasonably be expected to be borne by the Consumer for their use of the product or service. CUC is particularly concerned that, as drafted, there would appear to conflict in respect to Regulation 33 and any other Regulations that might concern the correction of billing errors or unbilled charges that provides unfair and unequitable treatment for the resolution of the error for all stakeholders. This Regulation would also appear to be in conflict with the Guiding Regulatory Principles Schedule to the ESR Law, Section 3(1), 3(2), 4(1) and most particularly, 5(8), which states in part that "[t]he decisions of the Office shall apply the principles of administrative law relevant to all administrative decision-makers, such as legality, adherence to the principles of due-process and natural justice, fairness and rationality..." It would be difficult to reconcile this Regulation with principles of natural justice, fairness and rationality whereby a Consumer may not be required to be charged for and pay for Products or Services rendered but initially unbilled more than three (3) months old.

CUC would request further definition or clarification for the term "inordinate burden" in respect to Regulation 34(c) in order to comment on this paragraph. CUC questions whether this term would be in respect to the particular circumstances or characteristics of an individual Consumer, in which case this provision could lead to discrimination in application, or is the intent to speak to a "typical" Consumer?



CUC would raise the need for additional clarification in respect to the definitions of the terms “Restrict,” “Suspension,” and “Disconnection” as provided in Part 1, Regulation 2, as they pertain to Sub-regulations 35(3), 35(4) and 35(5). In respect to the application of those actions in the electricity sector, there appears to be little differentiation in practice in respect to these terms and how they might be undertaken in respect to a Consumer’s service. Therefore, the timelines and notifications, as well as potential for fees or charges may lead to confusion as to what might constitute CUC undertaking to “Restrict” a Consumer’s access to electricity services, or “Suspend” their access, and so forth. Further, CUC notes there is an existing understanding amongst its Consumers of the term “Disconnection” which may differ from that listed in the draft Regulations. Adoption of the term as defined by the Office within the drafted Regulations might lead to further confusion on the part of Consumers and require broad changes to any relevant materials provided by CUC to Consumers in respect to disconnections of any kind. CUC would recommend that further opportunity be granted in respect to this Regulation and associated definitions to allow for a more informed review and response.

CUC would also raise concerns in respect to the provision of any contracted pre-payment services and terms therein that would entail a Consumer have Restriction of their access to the Service in the event that the accrued pre-payment value is exhausted by the Consumer’s use of a Product or Service. In respect to the draft Regulations there appears to be an omission accounting for the ability of the Sectoral Provider to Restrict or Suspend services to such type of unsecured service contract at the exhaustion of any credit balance. CUC would recommend a Sub-regulation be drafted in reference to Regulation 35 to allow for prepaid contractual services.

CUC would further note that in respect to Sub-Regulations 35(4) and 35(5), there may be conflict with Section 28 of the Electricity Law (2008), which states:

“Where any consumer is indebted to a licensee for electricity supplied or services rendered and remains so indebted for thirty days or more after demand has been made and served upon him in writing... it shall be lawful for the licensee to enter upon the relevant premises and cut off the supply of electricity from such premises until the amount of the debt, together with the cost of cutting off and restoring the supply, has been paid by the consumer.”

CUC would seek clarification from the Office as to how it proposes that a minimum of forty-five (45) days be provided after a payment falls due before a Consumer may have its Services Suspended, which might contravene the lawful ability of the licensee to enter the premises and cut off the supply of electricity after thirty (30) days of demand for payment. This incongruity supports the position offered by CUC that further discussion in respect to the definitions and application within the drafted Regulations is warranted to clarify and response in particular to Regulation 35.

CUC would also raise in respect to Regulation 35 that it is difficult to reconcile with Regulation 22. If a Security Deposit is limited by Regulation 22 to the anticipated charges for a single month, but is intended to offset unpaid charges whereby the Consumer is allowed a minimum of 30 days



from the payment falling due before the Sectoral Provider may seek to Restrict the Consumer's access to the service per Regulation 35(3), it would appear that the Sectoral Provider is being required to accept additional receivables risks in an arbitrary manner. CUC would therefore recommend that any provision for the allowance to require Security Deposits in Regulation 22 be coupled with the minimum service provision terms and inherent risks of unsecured charges associated with Regulation 35.

CUC would seek clarification as to Regulation 36 whether the reference to a Consumer paying a bill within the provided time period is limited to a manner in which the Sectoral Provider has received the payment within the provided time period.

Question 8: What are your views on Part 6 of the Draft Regulations? Will the proposed regulations, in your view, ensure E&U Sectoral Providers resolve network faults in an efficient and timely manner? If not, please explain in detail the changes required to achieve this objective.

CUC Response: CUC is supportive of clear standards and expectations for the provision of service, fault repair, and communications and accountability to Consumers in respect to the same by a Sectoral Provider. CUC is broadly supportive of the Regulations within Part 6 of the draft Regulations. CUC would provide, though, the following matters of concern in respect to the drafting for the same.

CUC is requesting clarification in respect to Sub-regulation 39(2) as to the source by which the Office may utilize to provide "relevant fault repair standards" to the Sectoral Provider from time to time. CUC is currently unable to comment as to reasonableness of this sub-regulation without an understanding of the materials and information that would be utilized by the Office to establish and provide such standards.

CUC would recommend that in respect to Sub-regulation 40(1) provision be granted for exclusions from the minimum seven (7) days notice for planned or anticipated disruptions of service where the time between CUC becoming aware of a need for a planned disruption and the undertaking of the planning disruption would present health or safety risks if CUC were required to comply with a minimum seven (7) day notice period. In certain instances, CUC notes that infrastructural conditions may be reported that would not fall under Sub-regulation 40(2), but would potentially lead to public harm or damage if not resolved prior to the time period specified for notice. It should be noted that CUC is supportive generally of providing affected Consumers with ample and reasonable notice for all anticipated or planned disruptions of service.

CUC would seek to clarify with the Office whether the use and availability of its "Outage Map" available on its website would fulfill generally the requirements for paragraph 40(2)(a) as giving notice in a convenient form.



After Regulation 40 (2) (b), CUC would recommend adding “provided all health, safety, environmental and requirements of the Sectoral Provider are complied with.”

CUC would recommend that the Office consider an exclusion to Regulation 41, and in particular Sub-regulation 41(1) in respect to any and all Consumers with a services fulfilled through an unmetered rate structure. As the most relevant example, CUC provides street and security lights through an unmetered service structure and would be unable to provide, if requested, a metered service to those Consumers in relation to that particular Product without a complete review and redevelopment of that particular service, rates, and terms. CUC would seek clarification from the Office if the intent of 41(1) is to require that all un-metered Consumers be provided a metered service upon request, or that all Consumers requesting a metered service be provided a meter upon request within thirty (30) working days of the order.

After Regulation 41 (1), CUC would recommend adding “provided such infrastructure exists and the total number of requests are within typical historical ranges.”

After Regulation 41 (4), CUC would recommend adding “In cases where solid state electronic electrical meters are utilized by a reputable manufacturer with an acceptable quality control and quality assurance program including factory calibration of every meter supplied, this requirement shall not be required unless there is a reported or suspected case of meter failure or malfunction.” Given the change from electromechanical to the modern solid state electron meters, the quality of the modern solid state electronic electrical meters have significantly improved. Areas of improvements have included; reliability, accuracy, drift and repeatability on electrical meters to a point where almost all of the issues are complete failures or malfunctioning of the meter and with extremely rare cases of inaccuracy. Based on this, within the North American Electrical Utility industry, for modern solid state electronic electrical meters, the standard for testing has changed significantly to the point that testing prior to installation and periodic testing which was done in the past has changed in many cases to no-testing and replacement of meters upon failure or malfunctioning.

For Regulation 41 (5), CUC would recommend changing “full load” to “the typical customer average loading ranging from (15%-50%) of the rated capacity of the meter.” The utilization of testing at average loading provide improved accuracy of customer metering as meters rarely if at all operate at 100% of the rated capacity and are typically operated in the 15-50% range.

Regulation 41 (9), requires customer notification within one billing period for usage above 50%. It is not clear over what the 50% consumption will be measured for deviation and what the base period would be. CUC would recommend that this section be replaced with the following “The Sectoral Provider shall be required to provide Customers with facilities for automatic notification of changes in consumption that are requested by the Customer and can reasonably be provided with current technologies.”



CUC raises concern that Sub-regulation 41(11) is not in accordance with the General Regulatory Guidelines Schedule to the ESR Law, and in particular, though not limited to, Section 5(8). CUC holds the position that in the event of any billing errors, fair and rational treatment for the correction of the error would be such that the corrective action be undertaken identically for all involved Stakeholders. The drafted paragraphs 41(11)(a) and 41(11)(b) seeks to undertake inequitable treatment for the correction of a billing error dependent upon which Stakeholder was subject to material detriment as the result of correcting the error. Such application is contrary to principles of natural justices and CUC would provide that the appropriate course of action would be to establish equal treatment to regulate the correction of any discovered billing errors. CUC would accept, as an example, that the converse of paragraph 41(11)(a) be established in replacement for 41(11)(b), such that any billing errors, whether resulting in the over- or under-charging of a Consumer for a service by a Sectoral Provider, will be reimbursed or charged in full to the Consumer for a period not to exceed six years immediately prior to the discovery of the error. This would not be dissimilar to the approved terms and conditions listed in CUC's Customer Service Code, which has been reviewed and approved in multiple instances by the Office. CUC would contest that any regulation in respect to the correction for quantifiable errors be remedied in a non-discriminatory manner to the contracted stakeholders.

In any case, CUC further notes that paragraph 41(11)(b) is incomplete, with the final sentence reading "This does not apply to customers who have intentionally or unintentionally bypassed any Billing Meter, provided any form of Billing information resulting in undercharges or have in any way." CUC notes that while its comments in respect to the Sub-regulation in general are as provided, it is further unable to assess and comment in respect to this paragraph on the basis that exclusionary clauses appear to be incomplete.

Question 9: Is there potential for consumer harm that has not been identified in this paper which warrants regulated consumer protection?

CUC Response: CUC notes that in the instances in which a sector is already regulated, with provisions for the regulator to review, comment upon, and ultimately approve or disapprove of services, rates, contractual terms and other matters as provided in the ESR Law and URC Law, substantial new regulation or regulatory requirements that overlaps with existing provisions may not ultimately provide Consumers with net benefits. CUC raises for consideration that where the drafted Regulations, for the sake of providing relatively standard conditions across different sectors with substantially different service models, might impose additional costs related to changes in the service standards previously approved pertaining to each sector and Sectoral Provider. It is not necessarily clear that those additional costs outweigh benefits already existing to Consumers in respect to existing protections reviewed and approved by the Office. CUC would refer the Office, as an example, to the continued provision of Customer Satisfaction survey scores supporting that there may not be significant support for additional regulations in excess of those already in place, particularly if it may entail increased cost to the Consumer as Section 3(7) of the



General Regulatory Principles provides that “a licensee shall be entitled to recover all reasonable increases in costs that arise due to changes in the standard for service.” The balance of regulatory requirements and costs to support said requirements is ultimately the remit of the Office; CUC would only note that on appearance there is sufficient evidence from its Consumers that there may not be a compelling need for broad interventions in this area.

Question 10: Do you agree that the proposed Draft Regulations will achieve the outcome of improved redress for consumers?

CUC Response: CUC would note that it already has a robust process in place for Consumers to seek redress for any complaints that is not fundamentally dissimilar to what has been proposed and is therefore of the opinion that the proposed Draft Regulations will not achieve an outcome of **improved** redress for Consumers. CUC notes it will rather provide for similar redress for Consumers in respect to Complaints.

Question 11: Please provide your views on any other matters you consider relevant to this Consultation

CUC Response: CUC would raise that in respect to this particular Consultation, given the scope of the impacted Stakeholders and that many Consumers might require a longer time to respond if so interested, it may meet the threshold listed in Section 37 of the Office’s Consultation Procedure Guidelines for an extended consultation period. CUC would further note that, in respect to its own questions and where CUC has sought clarification or comment from the Office, that it would likely be appropriate to engage in a second phase of consultation as per Section 42 of the Consultation Procedure Guidelines.

Concluding Remarks

CUC deeply values the relationship it holds with its customers and is supportive of the principles of Consumer Protections. CUC is broadly supportive of the intent by the Office to enshrine these protections across all sectors within the Office’s remit for the benefit of the Cayman Islands. CUC does note though where it appears the drafted Regulations may not consider all appropriate Stakeholder considerations, where it may conflict with the Office’s Guiding Regulatory Principles, or where there may be unintended gaps that would preclude the ability of a Sectoral Provider to provision beneficial services or products to its Consumers.

CUC looks forward to continued discussions with the Office in respect to this consultation.



Yours faithfully,

Sep 5 2020 12:08 PM



Letitia T. Lawrence
VP Finance & CFO



Water Authority-Cayman

Incorporated by Law No.18 of 1982 in the Legislative Assembly of the Cayman Islands

The Consultation Group
Utility Regulation and Competition Office
PO Box 2502
Grand Cayman, KY1-1104
CAYMAN ISLANDS

04 September 2020

via email to: consultations@ofreg.ky

E&U 2020– 3 - Consultation Proposed Consumer Protection Regulations (E&U Sectors)

To whom it may concern,

The Water Authority (WAC) has reviewed the Proposed Consumer Protection Regulations (E&U Sectors) and hereby submits its comments on the proposed Regulations.

This document appears not to have considered the existing processes of the various service providers. A few years ago, the Water Authority (WAC including the Laboratory) had to ensure that the Customer Service and complaint procedures met the requirements of what, at that time, was the Complaints Commissioner, now Ombudsman. It appears that OfReg has not paid attention to what those requirements are for Government agencies and how, what OfReg proposes compares to the current procedures. Is there still a role for the Ombudsman for WAC water and wastewater customers?

Further, in the interest of fairness and transparency, and as general courtesy, the WAC suggests that OfReg notifies, via email, anyone who has commented on any Consultation when the Determination is published. The current approach is inadequate as there is no communication with those who responded and they have to find out on OfReg's website whether a Determination has been made. This is time consuming as the website must be regularly checked and the website is not user friendly as it is outdated and significant portions are "under construction" or "coming soon". There are several consultations that are outstanding for well over a year. As OfReg wants to set high standards for the service providers they regulate, it is WAC's opinion that OfReg should lead by example.

In the WAC's view, the proposed Draft Regulations will require a significant re-write as substantial areas of the present document are clearly more applicable to telecommunications providers than to water, wastewater and electrical utilities. The WAC also recommends that, before the final determination is issued, another Consultation is conducted on the revised regulations.

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PO Box 1104, Grand Cayman KY1-1102, CAYMAN ISLANDS
PO Box 240, Cayman Brac KY2-2002, CAYMAN ISLANDS
Website: www.waterauthority.ky

Tel No: 345-94Water (2837) Fax No: 345-949-0094
Tel No: 345-948-1403 Fax No: 345-948-1404
Email: info@waterauthority.ky

Consultation Questions

Question 1: *What are your views on Part 2 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers have adequate information to make informed decisions when selecting E&U services and E&U Sectoral Providers? If not, please explain in detail the changes required to achieve this objective.*

The question is not relevant to the availability of local E&U services. In the Cayman Islands consumers have no choice which Sectoral Provider to choose for electricity, water and wastewater services. The location of their residence determines which service provider they have.

Question 2: *What are your views regarding the means by which the Sectoral Providers will be obligated to ensure the provision of information under clause 3 of the proposed Draft Regulations?*

The Sectoral Providers already provide a significant amount of information to consumers via their websites, social media pages, printed brochures etc. Most of the information required under Part 2 of the Draft Regulations is already covered.

Information on entering into contracts cannot be provided on the home page of a website and while some information is available in one or two clicks, the Sectoral Provider should not be restricted to the number of clicks for a consumer accessing this information. Rather than focusing on the number of clicks to get to specific information, the requirement should be that websites are clear and user friendly.

Regulation 3(2)(c): WAC submitted comments on the **OF 2019 - 1 - Consultation on Proposed Truth in Advertising Rules on 26 March 2019** (submissions were due by 29 March 2019 at 5:00 pm) and to date is not aware that a Determination has been issued. If it has been published, where is it located on OfReg's website? Please refer to WAC's earlier comments regarding OfReg notifying all parties that have commented on any Consultation launched by OfReg.

Regulation 3(3)(b): In WAC's view, a more practical approach should be considered. This implies that the Sectoral Provider will need to provide all relevant information regarding the services they provide in braille or on audio for people who are blind, or in large print for visually impaired people. Regarding information on Sectoral Providers' websites, note that web browsers provide a feature to significantly magnify web pages for the visually impaired. For totally visually impaired persons, visiting the Authority's office to conduct business, WAC suggests that upon request, an audio recording be provided.

Regulation 3 (4) (c): In WAC's view, the details required to be displayed are not necessary. For E&U Sectoral Providers this information should be readily available at all customer locations instead and can be periodically displayed in reception lobbies using digital media such as the TVs used for keeping consumers informed. Rates normally change annually, and are published in the media. How will this work for satellite locations where payments from multiple Sectoral Providers are collected, e.g. Post Offices, banks, gas stations?

Regulation 4 (1) (b): The length of time it will take for a service to be provided is difficult to state as it is dependent on current workloads as well as multiple factors outside the control of the water, wastewater or electricity utility (e.g., marking of underground services by other utilities, obtaining NRA approval, weather conditions, customer-side activities to be completed, etc.).

Question 3: *What are your views on Part 3 of the Draft Regulations? Will the proposed regulations, in your view, enable E&U Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously? If not, please explain in detail the changes required to achieve this objective.*

In our view, Part 3 of the proposed draft regulations will not satisfactorily enable E&U Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously for several reasons highlighted in the following paragraphs.

Regulation 12(1)(a): Does this replace the appeals process via the Ombudsman for WAC customers? WAC submitted comments on the **OF 2018 - 2 - Consultation on Proposed Draft Customer Complaints Appeals Procedure Guidelines on June 15, 2018**. A Determination was published, which includes WAC's comments. Why are the Customer Complaints Appeals Procedure Guidelines not referenced in these regulations? There is already a complaint's process from the Ombudsman that covers WAC's statutory functions unrelated to OfReg, why not use a similar process and have each E&U Sectoral Provider submit their procedures as per The Utility Regulation & Competition Law 2019 Revision, Sections 59 and 60.

Throughout these regulations there are at least six instances where reference is made to 'having a telephone number available to consumers free of charge'. If this requirement is really deemed necessary, would it not be more efficient to make one statement at the beginning of the regulations to that effect? However, free calls are not a standard customer service offered on the islands. Additionally, the expense of making a local phone call is not significant. Is there a requirement to provide a toll-free telephone number for overseas customers as well? What about roaming charges for customers with a local cell phone making enquiries, etc. when overseas? This requirement would be costly and onerous to the Sectoral Providers.

Regulation 7 (1): While initial complaints can be made via phone, it must be followed up in writing for clarity and evidence purposes. Furthermore, a distinction should be made between 'complaint' and 'service query'. Service issues/problems are key and are different to complaints and these should be the priority for a service provider. A complaint is pretty much a service issue/problem gone bad or unaddressed, including errors on the part of the service provider.

WAC does not accept verbal complaints, the person is acknowledged and advised to submit the complaint in writing. This ensures that the person's complaint is recorded as the person wishes.

Regulation 16(2) and 16(3): This should not be required in WAC's view. All WAC communications are conducted in English and complaints should therefore be made in English only. Please note that WORC (previously Immigration Department) requires that "persons from non-English speaking countries coming to work in the Cayman Islands are required to have a basic understanding of the English language to ensure they are able to perform their work duties effectively, administer themselves and their families, and assimilate quickly into the community". Why then are the Sectoral Providers required to take complaints in another language? Is there a precedent in any legislation in the Cayman Islands, not related to the activities regulated by OfReg, where a Government agency or business is required to accommodate business transactions in another language than English?

Question 4: *What are your views on the proposed time periods in relation to when consumers can file a complaint, as outlined in clause 8?*

Please note that Regulation 8 does not specify a time period for complaints, this is mentioned in Regulation 7(2). WAC assumes the end of Regulation 7(2) should have been "and for up to six (6) months after the end of his/her contract with the Sectoral Provider."

WAC has no issue with the time period. However, a consumer should have to file a complaint within a certain time of the incident or issue occurring (certainly not exceeding 3 months), and failing to do so should void the complaint as it is very difficult to review certain complaints where time is a key factor in the matter.

Question 5: *What are your views on Part 4 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, simple and fair terms and conditions for the provision of products and services? If not, please explain in detail the changes required to achieve this objective.*

The majority of Part 4 appears to be written from a telecommunication consumer protection perspective and should be reviewed and considerably reworded to apply to water, wastewater and electrical utilities. Therefore, in our view Part 4 of the proposed regulations will not ensure consumers and E&U Sectoral Providers will benefit from clear, simple and fair terms and conditions for the provision of products and services.

Contracts should be determined by the Sectoral Providers with OfReg only regulating those contract terms that it sees as absolutely necessary to regulate for good governance and ensuring that these are in the best interest of the consumer. It should also be considered that WAC operates under the provisions of the Water Authority Law (2018 Revision) and Water Authority Regulations (2018 Revision) which it needs to comply with and it would have been worthwhile to have taken those into consideration. There should be no conflict between the WA Law and the proposed regulations may reflect that status with phrases that note "or as per relevant statutes".

Regulation 17(2)(n): Any service is disconnected until reconnected (there is no reason for including a reference to 'suspension' of service.

Regulation 17(3) and 17(4): WAC considers these statements far too broad and too general. WAC suggests that OfReg provides further clarification and context.

Question 6: *Please provide your thoughts regarding the mandatory terms and conditions, that should be included in every contract, as outlined in clause 23(2).*

Please note that Regulation 23(2) does not specify mandatory terms and conditions, this should have been Regulation 17(2).

Subject to the comments made in response to Question 5, WAC has no objections to the mandatory terms and conditions as outlined in Regulation 17(2).

Regulation 23(1)(c): Please note that the reference to Regulation 3(8) is incorrect as it does not exist.

Question 7: *What are your views on Part 5 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.*

In WAC's view, Part 5 of the proposed draft regulations will not satisfactorily ensure that consumers and E&U Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, or reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues for several reasons highlighted below in the following paragraphs.

Regulation 24(d): Who determines whether interest on late payments is reasonable? Additionally, interest rates are set by the Water Authority Regulations, therefore WAC suggests amending this to "such interest shall be reasonable or as per relevant statutes".

Regulation 25: There is too much detailed information specified to be included on the bills. Some of this information should be readily available on the service provider's website. The bills will be cluttered with information.

Regulation 25(g) and 27(1)(d) and 27(2): It is not practical to issue customised bills to customers (WAC has nearly 20,000 customers). Bills are issued in hard copy and/or electronic format. It would require an unreasonable and disproportionate use of resources if any customer is able to dictate to a service provider that a bill needs to be provided in a specific format (i.e., Excel spreadsheet, Word file etc.).

Regulation 26(e)(i): WAC's statute requires payment of all outstanding amounts, even if in dispute. Otherwise this provides a way to delay payment, whilst still obtaining the service. Payment agreements are available to assist customers who are not able to pay substantial bills and/or until there is a completion of the dispute process.

Regulation 27(1)(f)(ii): This is unnecessary. A customer paying online will get confirmation at the time of payment, and if paid at WAC offices or Post Offices will get a receipt.

Regulation 27(1)(g): It is not practical to issue customised bills upon each individual customers' request (WAC has nearly 20,000 customers).

Regulation 31: In WAC's view, this is not reasonable. If a consumer makes such a request for an alternative medium and is willing to pay for it that does not necessarily mean that the Sectoral Provider will be able to provide the requested medium. The requirement to do this would be onerous to the Sectoral Provider.

Regulation 33: This does not provide for exceptional circumstances such as the Sectoral Provider being unable for any reason to gain access to read the meter, stuck meters, etc. In the event of an illegal connection, under this regulation the Sectoral Provider can only recoup losses for a period of three months. This provision appears not to be practical nor fair.

Regulation 36: The provided time period is dependent on the bill payment option and the associated processing time (i.e., this time period varies between the various payment options).

Regulation 37: WAC is not aware that local debt can be sold or assigned to third parties within the Cayman Islands.

Question 8: *What are your views on Part 6 of the Draft Regulations? Will the proposed regulations, in your view, ensure E&U Sectoral Providers resolve network faults in an efficient and timely manner? If not, please explain in detail the changes required to achieve this objective.*

The term "network fault" is not a term commonly used in the water and wastewater sector. The term is relevant to the telecommunications industry.

In our view, Part 6 of the proposed draft regulations does not necessarily ensure E&U Sectoral Providers resolve network faults in an efficient and timely manner.

Regulation 38(1)(a)(ii): Section 6 of The Water Authority Law clearly states that the provision of water supply and wastewater services is the duty of the Authority, where such scheme is *rational as determined* by the Authority. In our view, OfReg needs to consider the Water Authority's position before issuing such a directive.

Regulation 38(2): Is this applicable? Who does credit checks in the Cayman Islands?

Regulation 40(1): A 7-day notice period for planned work is not always practicable in the water and wastewater utility business. Three business days' notice to customers is more practical, and it is what WAC has been operating on and is in the same timeframe as what other water and wastewater utilities do. Also, if due to circumstances (e.g., weather) such disruption and/or outage has to be delayed, no additional notice period should be required.

Providing notices using a hard copy is not practical for disruptions of a large area and/or where a large number of customers will be affected, and having to hand deliver notices is not feasible. Radio announcements are more efficient and should be sufficient. Social media should also be utilised.

Regulation 41: Regulation 41 is not workable in its current proposed form. It is not reasonable or practical to have blanket meter accuracy requirements etc. across various utility industries. Accuracy limits are determined by the relevant standard (as published by ISO, AWWA, BS etc. for water meters; and similar standards exist for the electricity industry).

All water meters are checked for compliance with the relevant standards before they leave the factory (the industry standard for testing water meters is at three flow rates : low, medium and high). WAC has detailed meter accuracy and testing procedures for its water meters and how to deal with water meters that are out of specification. These are based on substantial industry experience and in WAC's view this approach is fair and equitable, both to the customer and the utility. CWC, CUC, and Cayman Brac Power & Light should have similar procedures as well. WAC recommends that OfReg reviews existing procedures for adoption, instead of utilising a blanket approach.

Question 9: *Is there potential for consumer harm that has not been identified in this paper which warrants regulated consumer protection?*

No comment.

Question 10: *Do you agree that the proposed Draft Regulations will achieve the outcome of improved redress for consumers?*

No, WAC does not agree that the proposed draft Regulations will achieve improved redress for consumers for reasons indicated below.

Water, wastewater and electrical services have been provided satisfactorily by the various established Sectoral Providers for a significant time. A large portion of what is addressed by these Draft Regulations is already established and working. It is unfortunate that OfReg has not taken into account the current procedures and safeguards of the various service providers, which already provide protection to consumers (and, if deemed necessary, could have been improved upon with minimal modifications). OfReg's attention, rather than prescribing detailed procedures, may have been more effectively focused on those areas which would actually improve the service to consumers.

There are several requirements in these Draft Regulations that will result in significant additional cost to the Sectoral Providers, while providing limited improved service to its customers (e.g., free phone calls, providing additional facilities to persons with disabilities, customizable bills, dealing with customers in multiple languages, not being able to adjust a bill where the customer was undercharged, only able to recoup losses for a period of three months only, etc.). These additional costs will no doubt have to be passed on to customers.

Question 11: *Please provide your views on any other matters you consider relevant to this Consultation.*

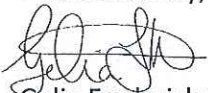
The term Consumer is defined as a person who enquires about, requests, receives, acquires, uses or subscribes to a Service Product from a Sectoral Service Provider for the primary purpose of his personal or domestic use. WAC has two issues with this definition:

1. This definition basically limits the scope of these Regulations to single residential water or wastewater customers. Multi-residential water customers (i.e. where one meter supplies 2 or more residential units), stratas, commercial and industrial use, and municipal use (i.e. public authority) are exempt from these Regulations. There is no explanation provided for this approach and WAC considers whether it is the intention of OfReg to exempt a substantial group of consumers from these Regulations.
2. Every customer who obtains water or wastewater service from the Water Authority signs a service contract to obtain an account with the Water Authority. Where it comes to specific issues relating to the account or services provided, the Authority only deals with the account holder. The simple reason is that persons who are not the account holder have no contractual relation with the Authority. The Regulations appear to lump everybody who uses or may consider to use water or wastewater service together and does not distinguish between persons with whom the Authority has a contractual relation and those who do not have an account.

The WAC has reviewed the Proposed Consumer Protection Regulations and has made numerous comments, which are in addition to the responses to the above questions. **The annotated document is attached as an integral part of the WAC's submission on this Consultation.**

If the Office wishes to discuss our comments, we can make ourselves available for a meeting.

Yours sincerely,



Gelia Frederick-van Genderen
Director, Water Authority

enc:

cc: Mr Kearney Gomez, MBE JP, Chairman, Water Authority Board *via email to*
kearney.gomez@gmail.com

E&U 2020-3-Consultation
Proposed Consumer Protection Regulations
(E&U Sectors)



Launch Date: 6 August 2020

Closing Date for comments: 5 September 2020



Title: E&U 2020- 3 - Consultation
Proposed Consumer Protection Regulations (E&U Sectors)

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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, 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. The purpose of this consultation paper is to seek the views of operators, the general public, and other interested parties, regarding the draft Consumer Protection Regulations in relation to the Electricity, Water and Wastewater (E&U) sectors ('the Draft Regulations').

B. Legal Framework

5. The Office is guided by its statutory remit in developing the draft Regulations, notably the provisions which follow.

Section 6(1)(c) of the Utility Regulation and Competition Office Law (as revised) ('URC Law') 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...". Section 111(2)(e) of the URC Law provides that the Office may make regulations relating to quality standards in consultation with the Minister."



6. Sections 66(2) – (5) of the Electricity Sector Regulation Law (2019 Revision) (the “ESR Law”) states:

66.(2) A complaint may be made to the Office by any person who is dissatisfied with the service provide to him by, or who claims to be adversely affected by, the actions or omissions of a licensee.

(3) The Office shall prescribe standards for the provision of service for and by all licensees.

(4) The Office shall review and may approve rules and procedures to be established by T&D licensees relating to the provision, refusal, disconnection or interruption of service.

(5) The Office shall make rules and establish procedures relating to the administration and resolution of complaints, without limitation, including requirements for and the determinations relating to the payment of the costs of proceedings and procedures for the resolution of complaints and the payment of compensation to a complainant, which shall be binding upon licensees.

7. Sections 14(1) – (4) of the Water Sector Regulation Law (2019 Revision) (the “WSR Law”) states in part:

14.(1) Sectoral Providers shall use their best endeavours to ensure that their services are –

(a) reliable and safe;

(b) efficient;

(c) provided with due care and skill; and

(d) rendered in accordance with this or any other Law, concessions and Licences and to the standards reasonably expected of a competent provider of those services.

(2) The Office may prescribe standards of performance in connection with the provision of water supply and wastewater services to customers, after consultation with Sectoral Providers and persons who are likely to be affected, which may include incentive based performance mechanisms.

(3) The Office may, having regard to Government's social policy objectives as set out in writing, require Sectoral Providers to make special provisions to meet the needs of the disadvantaged and elderly.

(4) A person may make a written complaint to the Office in respect of any service provided by a service provider, or if the person claims to be adversely affected by the actions or omissions of a service

Commented [WAC1]: Financial arrangements per Government's social policy objectives for the disadvantaged or elderly are best managed through the Needs Assessment Unit (NAU) rather than having the Sectoral Providers make provisions. NAU is better equipped to determine whether or not disadvantaged and elderly persons should be provided financial support to manage their utility bills.



provider.

8. Section 6(2)(d) of the URC Law states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may *"make administrative determinations, decisions, orders and regulations"*.
9. Section 7(1) of the URC Law 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."*
10. It is the position of the Office that it retains the right to propose amendments to the Regulations when appropriate but not so frequent so as to render the consumer protection framework arbitrary, but in any event only after consultation.

C. Draft Consumer Protection Regulations Objectives

11. The Office considers that it is in the interests of the public to regulate the terms and conditions under which services in relation to the E&U sectors are provided by prescribing quality standards. This will ensure those services are provided in accordance with the standards reasonably expected of competent providers of E&U services.
12. The Draft Regulations are attached to this consultation document, and are summarised in the paragraphs below. The Office strongly encourages respondents to read the Draft Regulations prior to submitting comments, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
13. The attached draft Regulations are divided into six main sections, excluding the Preliminary section, and consist of forty-one (41) Regulations which address:
 -] the requirements on Sectoral Providers in relation to the provision of information;
 -] the requirements on how to address complaints;
 -] contract terms;
 -] billing; and,
 -] service provision and fault repair
14. The main objective of the Draft Regulations is to outline the protocols and rules which Sectoral Providers should adhere to when interacting with and serving consumers in the Cayman Islands in relation to their E&U Services.
15. A Sectoral Provider *"means a person, whether or not an authorisation*



holder, who provides goods or services in a sectoral utility".

16. A Consumer is defined as "a person who enquires about, requests, receives, acquires, uses or subscribes to the Service or Product, from a Sectoral Provider for the primary purpose of its personal or domestic use."
17. The information that is also required to be conveyed by the Sectoral Provider to the Consumer, before the Consumer enters into a contract with the Sectoral Provider, is also addressed in Part 1. This information includes, but is not limited to, a complete description of the service and/or product to be provided under the contract; details of any termination fees payable by the Consumer; details of the dispute resolutions procedures and methods; details regarding any other service and/or product that is required in order to effectively utilise the service and/or product which is the subject of the contract; as well as details of any applicable quality standards that will apply to the service and/or product to be provided under the contract.
18. Part 2 of the Draft Regulations outlines the requirements in regard to the provision of information by a Sectoral Provider to a Consumer. In addition, the requirements regarding accurate, up to date and clear advertising of information provided to consumers as well as the forms in which Consumers should be able to receive the information, e.g. electronic, are also outlined.
19. Part 3 of the Draft Regulations, which addresses complaints; including the requirement for Sectoral Providers to implement a complaints handling procedure that makes provision for complaints to be made to the Sectoral Providers by various methods and free of cost to the Consumer when using any local telephone network, save as specifically provided for by the Regulations. Part 3 also outlines how Sectoral Providers should handle verbal complaints, as well as the requirement to keep a record of complaints and to report certain statistics regarding complaints to the Office at the end of each quarter.
20. The requirements regarding terms and conditions of a contract entered into by a Sectoral Provider with a Consumer, any amendments to those terms and conditions and contracts in relation to roaming plans are outlined in Part 4 of the Draft Regulations.
21. Part 5 of the Draft Regulations addresses billing; including, but not limited to, contents of bills, methods by which the Consumer can make enquires about bills, as well as the production and availability of fully itemised bills. Part 5 also outlines the available remedies that the Sectoral Provider may utilise in response to the non-payment of an outstanding and undisputed balance on a Consumer's account.
22. Provision of services and fault repairs are addressed in Part 6, which is

Commented [WAC2]: According to the dictionary 'The consumer is an individual who pays some amount of money for the thing required to consume goods and services'....

The definition of consumer in the regulations makes reference to personal or domestic use. This definition excludes business customers or where an account holder is a company (including strata's) and/or its purpose is commercial or industrial.

How are entities that fall outside of the scope of the definition of Consumer being dealt with in these regulations? Are there no rules or expectations for these categories?

WAC uses the term customer (account holder), to define the person who has signed the service contract. WAC's obligations to the customer and those to the consumer are not the same. There is a difference between a customer and a consumer as per the definition in the regulations. (All customers are consumers, but not all consumers are customers)

Note that a tenant can be a consumer and the proposed regulations give rights to someone to complain who has not signed a contract, and therefore does not have a contractual relationship with the Service Provider. There needs to be a distinction in the definitions and the various sections.

Commented [WAC3]: This would require all Sectoral Providers to have incoming toll-free service from ALL local telephone service providers.

In most instances, customers have a service plan that includes the number of calls they reasonably expect to make each month, so telephone companies will essentially get paid twice for each call.

Commented [WAC4]: This is not applicable and appears to be copied from regulations for the telecommunication industry. E&U companies (electricity, water, wastewater) do not offer roaming plans.



the last main part of the Draft Regulations. Part 6 outlines the Sectoral Provider's requirements in relation to the provision of services within agreed timeframes, the Consumer's ability to report faults at all times, and provision of notices of any planned or anticipated disruptions and/or outages to Consumers.

D. Consultation Questions

23. Based on the above, the Office invites all interested parties to submit their comments, with supporting evidence, on the following questions:

Question 1: What are your views on Part 2 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers have adequate information to make informed decisions when selecting E&U services and E&U Sectoral Providers? If not, please explain in detail the changes required to achieve this objective.

Question 2: What are your views regarding the means by which the Sectoral Providers will be obligated to ensure the provision of information under clause 3 of the proposed Draft Regulations?

Question 3: What are your views on Part 3 of the Draft Regulations? Will the proposed regulations, in your view, enable E&U Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously? If not, please explain in detail the changes required to achieve this objective.

Question 4: What are your views on the proposed time periods in relation to when consumers can file a complaint, as outlined in clause 8?

Question 5: What are your views on Part 4 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, simple and fair terms and conditions for the provision of products and services? If not, please explain in detail the changes required to achieve this objective.

Question 6: Please provide your thoughts regarding the mandatory terms and conditions, that should be included in every contract, as outlined in clause 23(2).

Question 7: What are your views on Part 5 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.

Question 8: What are your views on Part 6 of the Draft Regulations? Will the proposed regulations, in your view, ensure E&U Sectoral Providers

Commented [WAC5]: Has OfReg considered the current procedures that service providers have in place? This document appears not to have considered existing processes in the utilities. A few years ago, WA (including the Laboratory) had to ensure that the Customer Service and complaint procedures met the requirements of what, at that time was the Complaints Commissioner, now Ombudsman. It appears that OfReg has not considered what those requirements are for Government agencies and how, what OfReg proposes compares to the current procedures. Is there still a role for the Ombudsman?

Commented [WAC6]: Consumers have no choice which service provider to choose for electricity, water and wastewater services. The Service Location determines which service provider you have. These utilities are considered natural monopolies.

Commented [WAC7]: Refer to WAC comments in regards to OF 2018 - 2 - Consultation on Proposed Draft Customer Complaints Appeals Procedure Guidelines which was published <https://www.ofreg.ky/upimages/commonfiles/1570607681-OF2019-1-DeterminationCCAPGS.pdf> WAC could not find reference to this determination in these proposed regulations.



resolve network faults in an efficient and timely manner? If not, please explain in detail the changes required to achieve this objective.

Commented [WAC8]: The term "network fault" is not a term commonly used in the water and wastewater sector. The term is relevant to the telecommunications industry.

Question 9: Is there potential for consumer harm that has not been identified in this paper which warrants regulated consumer protection?

Question 10: Do you agree that the proposed Draft Regulations will achieve the outcome of improved redress for consumers?

Question 11: Please provide your views on any other matters you consider relevant to this Consultation.

E. How to Respond to This Consultation

24. 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>
25. The Office considers that because the Draft Regulations are published as part of this consultation, it 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 Law 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 Regulations to be a "draft administrative determination" for the purposes of section 7(1).
26. All submissions on this consultation should be made in writing, and must be received by the Office by **5 p.m. on 5 September 2020** at the latest.
27. The Office will post any comments received within the stated deadline on its website by **5 p.m. on 18 September 2020**.
28. Submissions may be filed as follows:

By e-mail to:
consultations@ofreg.ky

Commented [WAC9]: In the interest of fairness and transparency, and as general courtesy, the WAC suggests that anyone who has commented on the Consultation is notified by the Office of their Determination (by email will suffice). The current approach is inadequate as there is no communication with those who responded and they have to find out on OfReg's website whether or a Determination has been made. This is time consuming as the website must be regularly checked and the website is not user friendly as it is not up to date. There are several consultations that are outstanding for well over a year. If OfReg wants to set high standards for the utilities they regulate, they should set a good example themselves.



Title: E&U 2020- 3 - Consultation
Proposed Consumer Protection Regulations (E&U Sectors)

Or by postto:
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, Alissta Towers
85 North Sound Rd.
Grand Cayman
CAYMAN ISLANDS

29. The Office expects to publish a determination regarding the Draft Regulations by the end of Q4 2020.

CAYMAN ISLANDS



Supplement No.[...] published with Gazette No [...] dated [...].

THE UTILITY REGULATION AND COMPETITION LAW,

(2019 REVISION)

**THE ENERGY AND UTILITIES (CONSUMER PROTECTION)
REGULATIONS, 20XX**

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- 38. Provision of Services.
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**THE UTILITY REGULATION AND COMPETITION LAW,
(2019 REVISION)**

PART 1 - PRELIMINARY

**THE ENERGY AND UTILITIES (CONSUMER PROTECTION)
REGULATIONS, 20XX**

The Office, in exercising of its powers conferred by section 111(2)(e) of the Utility Regulation and Competition Law (as revised), makes the following regulations-

1. These regulations may be cited as the Energy and Utilities (Consumer Protection) Regulations, 20XX.

2. In these regulations-

The following terms shall have the following meanings. Words or phrases denoting the singular shall include the plural, and vice versa. Words or phrases that denote a gender shall include both genders.

“Authorisation” means a licence, permit or other form of authority granted in accordance with the Law, or sectoral legislation.

“Authorisation Holder” has the same meaning as in the Law;

“Bill” means a notice from a Sectoral Provider, presented in hard copy or electronic form, which advises a Consumer of the money due in respect of any Product or Service provided to the Consumer by the Sectoral Provider;

“Billing Medium” means the format in which a Bill is provided to a Consumer by a Sectoral Provider;

“Billing Period” means the period of time covered by each Bill issued by the Sectoral Provider, or as the context requires, the period of time covered by a particular Bill;

“Business Day” means any day other than a Saturday and Sunday, and a public holiday declared in the Cayman Islands;

“Complaint” means an expression of dissatisfaction made by a Consumer to a Sectoral Provider in relation to its Services, Products or the Sectoral Provider’s

complaints handling process to which the Consumer expects a response from the Sectoral Provider;

“Consumer” means a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a Sectoral Provider for the primary purpose of his personal or domestic use;

“Credit Management” means the process by which a Sectoral Provider manages any credit risk to the Sectoral Provider or by which it collects outstanding debts from a Consumer;

“Credit Management Action” means any action taken by a Sectoral Provider to facilitate Credit Management;

“Customer Service Representative” means anyone who is directly or indirectly employed or contracted by the Sectoral Provider to sell, offer to sell, or otherwise promote the Sectoral Provider’s Services and Products on its behalf

“Data Controller” as defined in the Data Protection Law, 2017;

“Data Subject” as defined as in the Data Protection Law, 2017;

“Disconnect” means any action taken by a Sectoral Provider with the intention of permanently preventing the use by a Consumer of a Product or Service it provides to that Consumer;

“Force Majeure” means an unforeseen and uncontrollable force or event outside the reasonable control of the party affected by that event, including but not limited to one or more of the following: fire, flood, earthquake, natural disaster, war, strike, lockout, riot, explosion, insurrection, terrorism, government action or any exercise of emergency powers by any governmental authority;

“Interim Billing” means providing a Consumer with a Bill other than at the end of a Billing Period;

“Law” means the Utility Regulation and Competition Law as revised from time to time;

“Mass Media” means any means whether written, electronic, spoken or visual that is used to communicate information to the general public;

“Office” as defined in the Law;

“Personal Data” as defined in the Data Protection Law, 2017;

“Product” means a physical item that is provided, or caused to be provided, by the Sectoral Provider to a Consumer;

Commented [WAC10]: A distinction should be made between ‘complaint’ and ‘service query’. Service issues/problems are key and different to complaints and these should be the priority for a utility. A complaint is pretty much a service issue/problem gone bad or unaddressed, including errors on the part of the utility.

Commented [WAC11]: This means that the Regulations will not be applicable to businesses, Strata’s and any entity that is not using the service for the primary purpose of personal or domestic use (e.g., commercial or industrial use). Is this indeed the intention of the regulations?

Commented [WAC12]: The definitions for “disconnect”, “restrict”, “suspend” and “suspension” must be amended (or removed) to better reflect the water, wastewater and electricity industry. As a minimum the word “permanently” should be removed as this contradicts the definition of “reconnect”. If a Service is “permanently prevented” it cannot be reconnected.

Commented [WAC13]: Suggest the word ‘regular’ or ‘normal’ is inserted before ‘Billing Period’.

The Energy and Utilities (Consumer Protection) Regulations, 20XX

“Quarter” means a period of three (3) calendar months commencing 1st January 1st April 1st July, and 1st October;

“Reconnect” means any action taken by a Sectoral Provider with the intention of allowing the use by a Consumer of a Product or Service it had previously provided to that Consumer and had previously taken action to Disconnect;

“Restrict” means any action taken by a Sectoral Provider to limit temporarily a Consumer’s access to a Product or Service provided to that Consumer by the Sectoral Provider;

Commented [WAC14]: This is not really applicable to the water, wastewater or electricity industry. Either a service is present or not, it cannot be limited.

“Security Deposit” means a payment collected by a Sectoral Provider from a Consumer to mitigate any actual or perceived credit risk which the Sectoral Provider assumes in providing a Product or Service to that Consumer;

“Sectoral Provider” has the same meaning as in the Law;

Commented [WAC15]: This is defined twice. The first definition (as defined in the Law) is correct. The second definition is incomplete and incorrect.

“Service” means a Service offered or provided to a Consumer by a Sectoral Provider;

“Sectoral Provider” means a Licensee who provides a Service; Sector

Commented [WAC16]: See earlier comment above

“Spoken Communication” means verbal communication (including such things as recordings) with a Consumer about the provision of a Service and /or Product.

“Suspend” means any action taken by a Sectoral Provider to cause Suspension;

“Suspension” means the temporary prevention of use by a Sectoral Provider of a Service provided to a Consumer; and

Commented [WAC17]: These definitions (and any further references thereto in the regulations) should be removed as the definition for ‘disconnect’ (amended as indicated earlier) should be sufficient.
Note: Any Service is disconnected until reconnected (there is no reason for including a reference to ‘suspension’ of service.)

“Verbal Complaint” means a Complaint made in person or over the telephone.

“Website” means any locations connected to the internet that maintains one or more pages on the world-wide web, applications and social media feeds;

Commented [WAC18]: Website is typically defined as a page or collection of pages on the World Wide Web and related content that is identified by a common domain name, and made available online by an individual, company, educational institution, government, or organization. Social media feeds should not be included in the definition for ‘website’, as many references in these regulations appear to only apply to the above definition.

PART 2 – PROVISION OF INFORMATION

3. (1) Where a Sectoral Provider is required to provide information to a Consumer under this regulation, unless otherwise specified, this is to be effected -

- (a) by Spoken Communications; or
- (b) by making the information available; and,

- (c) by prominently displaying the information on all websites through which the Consumer can enter into a contract with the Sectoral Provider i.e. displaying it on the home page of any such website or on a page that can be accessed by clicking on no more than two links, the first of which must be on the home page of the website.
- (2) All information provided by a Sectoral Provider for the purposes of complying with this regulation or otherwise, including for the avoidance of doubt any information provided in the Mass Media or in advertisements, shall be -
 - (a) accurate;
 - (b) up-to-date;
 - (c) adheres to the Truth in Advertising Rules and,
 - (d) presented in a manner that is simple, clear and avoids the use of unnecessary legal or technical terms.
- (3) In addition, all information provided by a Sectoral Provider for the purposes of complying with these regulations shall be -
 - (a) provided to a Consumer in hard copy or electronic form on his request;
 - (b) no later than twelve months after the effective date of these Regulations, made available to a Consumer on his request in a format that is accessible to a person with disabilities, including where relevant in audio message; and,
 - (c) unless otherwise provided in these regulations, made available and provided to the Consumer on request and free of charge.
- (4) A Sectoral Provider shall provide the following information to Consumers, the details of -
 - (a) all material aspects of any Service or Product it offers that reasonably might be expected to impact upon a Consumer's decision to enter into a contract for that Service or Product;
 - (b) all material aspects of any Service or Product it offers that reasonably might be expected to impact on the Consumer's enjoyment of that Service or Product;
 - (c) the rates on which all its Services and Products are offered, such information to be prominently displayed at all customer service locations and on any website through which the Sectoral Provider conducts its business; and,

Commented [WAC19]: Information on entering into contracts cannot be provided on the home page of a website and while some information is available in one and two clicks, the provider should not be restricted to the number of clicks for a consumer accessing a contract. In WAC's view this provision should state that websites should be clear and user friendly rather than focusing on the 2 click provision.

Commented [WAC20]: Have these been published? If so, where can they be found? The Water Authority submitted comments on the 2019 - 1 - Consultation on Proposed Truth in Advertising Rules on 26 March 2019 (submissions due by 29 March 2019 at 5:00 pm) and WAC is not aware that a Determination has been issued.

Commented [WAC21]: This is not practical. The utility will then have to provide all relevant information regarding the services they provide in braille or on audio for people who are blind, or in large print for visually impaired people. A more practical approach should be considered

Regarding information on Sectoral Providers' websites, note that web browsers provide a feature to significantly magnify web pages for the visually impaired. For totally visually impaired persons, visiting the Authority's office to conduct business, WAC suggests that upon request, an audio recording be provided.

Commented [WAC22]: In WAC's view the details as required to be displayed are not necessary. Why not have the requirement to have this information readily available at all customer locations instead? Rates could change annually, and are published.

- (d) the terms and conditions on which all its Services and Products are offered, such information to be available at all customer service locations and also be displayed on any website through which the Sectoral Provider conducts its business.
4. (1) Before entering into a contract with a Consumer, a Sectoral Provider (including where appropriate the Sectoral Provider's Customer Service Representative) shall provide the following information to the Consumer -
- (a) a complete description of the Service to be provided under the contract;
 - (b) details of the length of time it will take for the Service and/or Product to be provided, including in particular the length of time it will take to initiate any connection required for the provision of the Service and/or Product;
 - (c) details of any termination fees payable by the Consumer if the services or products is terminated before the end of any minimum period of time specified by the contract;
 - (d) details of any term in the contract that requires the Consumer to provide notice of his intention to terminate the contract, in particular any requirements in relation to the manner in which such notice is to be provided and/or the minimum period of notice the Consumer is required to provide;
 - (e) details of the procedures for and methods by which disputes in relation to or arising out of the contract may be resolved;
 - (f) details of any applicable quality standards that will apply to the Service and/or Product to be provided under the contract;
 - (g) details of any compensation, discount, rebate, refund or other arrangements which may apply if the quality standards applicable to the contract are not met; and,
 - (h) where the contract provides for the Service and/or Product to be provided under it to be upgraded or either at a specified point or on request, details of the terms on which the Service and/or Product can be upgraded, including in particular any fees or other charges that will be incurred by such upgrade or migration, and the impact (if any) such upgrade will have on the quality standards that apply to the Service and/or Product provided under the contract.
- (2) Where the Sectoral Provider offers more than one Service and/or Product as part of a package or bundle, before entering into a contract with a

Commented [WAC23]: The length of time is difficult to state as it is dependent on current waiting lists as well as multiple factors outside the control of the water, wastewater or electricity utility (e.g., marking of underground services by other utilities, obtaining NRA approval, weather conditions, customer-side activities to be completed, etc.).

Commented [WAC24]: A minimum period for a contract is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC25]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Consumer to provide any such package or bundle, a Sectoral Provider shall provide the following information to the Consumer -

- (a) a description of each component Service and/or Product; and,
- (b) the price the Sectoral Provider would charge for each component were it to be supplied or sold on an individual basis.

5. In any Spoken Communication, a Sectoral Provider shall promptly provide the following information -

- (a) the identity and brand name of the Sectoral Provider;
- (b) the name of the person making the Spoken Communication;
- (c) the primary purpose of the Spoken Communication;
- (d) in relation to any Service and/or Product being sold -
 - (i) a description of the Service and/or Product;
 - (ii) any charges applicable to the Service and/or Product;
 - (iii) any special offer, discount or package available in relation to the Service and/or Product that is the subject of the Spoken Communication;
- (e) a specific telephone number a Consumer may call in the event he wishes to cancel any contract entered into as a result of the Spoken Communication.

6. Subject to any other Law or legal requirement, a Sectoral Provider shall only keep a record of all the Personal Data relating to a Consumer's account, contract and his/her interactions with the Sectoral Provider for the duration of the Consumer's contract with the Sectoral Provider and for a period of twelve (12) months following the termination of that Consumer's contract.

PART 3 – COMPLAINTS

7. (1) All Sectoral Providers shall implement a Complaints handling procedure that -

- (a) makes provision for Complaints to be made to it in all of the following ways -

Commented [WAC26]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC27]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry. Service contracts cannot be cancelled verbally. This must be done in writing eg. submission of a form or email.

Commented [WAC28]: This is not practical and the rationale for it is not clear. A lot of historical information will be removed from the record after 12 months.

Under the Data Protection law and in certain instances there is a process for exclusion. Is this requirement within the remit of OfReg to regulate?
Additionally, for situations where a water service contract is discontinued, eg. customer decides to cancel service as they sold the property, it is impossible to only keep the selling customer's information for 12 months as that would mean that the utility would lose the service installation information which was part of the original customer request. To separate out the service installation record from the customer information for all such historical situations would have a significant impact on WAC's resources (financial and human).
Additionally, when a service contract is cancelled by a customer, it does not mean that the customer has paid of all outstanding balances. If the utility has to remove all customer information within a year after cancellation of contract, how will they be able to continue Collection actions? In the event that that customer applies for service any time thereafter, the utility will have no record to indicate there are outstanding amounts on the previous account, and will have to provide him/her with service as it would for any other applicant.

Commented [WAC29]: While initial complaints can be made via phone, it must be followed up in writing for clarity and evidence purposes. Furthermore, a distinction should be made between 'complaint' and 'service query'. Service issues/problems are key and are different to complaints and these should be the priority for a service provider. A complaint is pretty much a service issue/problem gone bad or unaddressed, including errors on the part of the service provider.

WAC does not accept verbal complaints, the person is acknowledged and advised to submit the complaint in writing. This ensures that the person's complaint is recorded as the person wishes.

- (i) in person at any of the Sectoral Provider's customer service locations
- (ii) by telephone;
- (iii) in writing, presented in hard copy or electronic form; and
- (iv) through the Sectoral Provider's website by means of an online form;
- (b) save as specifically provided for by these regulations, is free of cost for the Consumer. In particular, a Sectoral Provider must provide access to a telephone number through which Complaints can be made free of charge to the Consumer when using any local telephone network.

(2) All Complaints may be made by the Consumer: at any time before entering into a contract with the Sectoral Provider; during the duration of his/her contract with the Sectoral Provider; and for up to six (6) months not determined after the end of his/her contract with the Sectoral Provider.

8. (1) A Sectoral Provider shall publicise the availability of this Complaint handling procedure to Consumers by providing information about it -

- (a) prominently on any Website through which the Sectoral Provider does business i.e. by displaying it on the home page of any such Website or on a page that can be accessed by clicking on one link on the home page of the Website;
- (b) all customer service locations where its Services and Products are sold; and
- (c) in any other way that the Office shall direct from time to time.

(2) A Sectoral Provider shall ensure that all its Customer Service Representatives are able to inform Consumers of -

- (a) the Consumer's right to complain;
 - (b) the ways in which a Complaint can be made;
 - (c) the ways in which the Sectoral Provider can be contacted in relation to Complaints and potential Complaints; and
 - (d) where the Consumer can obtain further information about the Complaints handling procedure.
- (3) The information provided under regulation 8(1) shall set out

Commented [WAC30]: Does OfReg also have this provision for their own operations? It sounds good, but is probably not practical and the expense of making a local phone call is not that much anymore. What about overseas customers, is there a requirement to provide a toll-free telephone number for them as well? What about roaming charges for customers with a local cell phone making enquiries etc. when on vacation or otherwise being overseas? This requirement would be costly and onerous.

Throughout these regulations there are at least six (6) instances where reference is made to 'having a telephone number available to consumers free of charge'. If this requirement is really deemed necessary, would it not be more efficient to make one statement at the beginning of the regulations to that effect?

Commented [WAC31]: It is not clear what is meant here, further clarification from OfReg is needed. Does OfReg mean "and for up to six (6) months after the end of his/her contract with the Sectoral Provider."

Commented [WAC32]: It is WAC's view, that a consumer should have to file a complaint within 3 months of the incident or issue happening, and failing to do so should void the complaint as it is very difficult to go back and review certain complaints where time was key factor in the matter.

Commented [WAC33]: The definition of Website includes social media feeds. It is not clear how this provision for one click can be realized for social media feeds.

Commented [WAC34]: WAC expects that the process as directed by OfReg will be reasonable, fair and transparent.

The Energy and Utilities (Consumer Protection) Regulations, 20XX

- (a) the Consumer's right to complain;
 - (b) the ways in which a Complaint can be made;
 - (c) the ways in which the Sectoral Provider can be contacted in relation to Complaints; and
 - (d) the information and documents the Consumer will need to provide to the Sectoral Provider when making a Complaint.
- (4) The information provided under regulations 8(1) and 8(2) shall be
- (a) accurate;
 - (b) up to date;
 - (c) presented in a manner that is simple, clear and avoids the use of unnecessary legal or technical terms; and
 - (d) no later than twelve months after the effective date of these Regulations, where requested, provided in a range of formats, including formats that will be accessible to people with disabilities.
9. A Sectoral Provider shall ensure that -
- (a) all Consumers who make a Complaint are treated with fairness and courtesy;
 - (b) all Complaints are dealt with objectively and efficiently;
 - (c) all communication with Consumers for the purposes of this regulation is undertaken in clear and easy to understand language;
 - (d) all its Customer Service Representatives are aware of -
 - (i) the Sectoral Provider's complaint handling procedure;
 - (ii) the Sectoral Provider's obligations under this regulation; and
 - (iii) the potential remedies available to resolve a Complaint;
 - (e) Consumers are provided with a means of monitoring the progress of the resolution of any Complaint they have made;
 - (f) the Sectoral Provider is able to and does monitor the progress of the resolution of any Complaint it has received;
 - (g) the Sectoral Provider is able to and does monitor the progress of any actions it has indicated it will carry out as part of the Complaint handling procedure and/or the resolution of a Complaint;
 - (h) Consumers are informed promptly of any delays to timeframes that have been proposed as part of the complaint handling procedure;

Commented [WAC35]: See response to Consultation questions. A practical and reasoned approach is needed here. Does OfReg provide the same level of service for their own operations?

Commented [WAC36]: It is unclear how this can be achieved.

- (i) errors in a current Bill are corrected within two (2) Business Days and the changes shall be reflected in the next Bill;
- (j) any remedy offered as part of a resolution is tailored to the Complaint made and, in particular, addresses -
 - (i) the root cause of the Complaint; and
 - (ii) the personal circumstances of the Consumer making the Complaint in so far as these are known to the Sectoral Provider;
- (k) where a Complaint is indicative of a wider problem or issue, the Sectoral Provider addresses the root cause of that problem or issue;
- (l) no Complaint is closed unless -
 - (i) the Consumer and the Sectoral Provider have agreed on a course of action, and the Sectoral Provider has taken the course of action and resolved the Complaint to the satisfaction of the Consumer; or
 - (ii) the Consumer has indicated that he no longer wishes to pursue the Complaint and has consented to the Complaint being closed;
- (m) it has a process in place whereby any decision taken by the Sectoral Provider in relation to the handling and/or proposed resolution of a Complaint can be referred to a suitably qualified senior employee (for example, a senior manager) for further consideration; and
- (n) where a Consumer informs the Sectoral Provider that he is dissatisfied with any decision taken by the Sectoral Provider in relation to the handling and/or proposed resolution of a Complaint, the Consumer is informed of the process under regulation 11.

10. Further to regulation 9(a), a Sectoral Provider shall –

- (a) ensure that elderly people and people with disabilities are able to make and pursue a Complaint effectively and efficiently, in particular by -
 - (i) allowing such Consumers to make and/or pursue a Complaint through an authorised representative; and
 - (ii) ensuring the process of authorising a representative is quick and straightforward;

Commented [WAC37]: This is not practical in all instances.

Small errors, where this is a service issue, can be resolved quickly. However, there may be more complex issues (i.e. issues in the billing software) where this timeframe cannot be realised.

Commented [WAC38]: What does this mean?

Complaints should be resolved objectively, based on facts only, so they are fair and transparent. However, if the remedy involves payment by the customer, WAC will agree, upon request, a payment plan with the customer.

Commented [WAC39]: This not practical as it appears that complaints can remain open forever if the complaint is not resolved to the satisfaction of the consumer.

This is contradicted later on. Therefore, there should be another item added to 9(1):

(iii) the Complaint has been resolved as per regulation 12

Commented [WAC40]: For clarity, the phrases 'authorised' representative and 'authorisation' should be changed as 'Authorisation' is a defined term under these regulations, meaning something entirely different.

Suggest to refer to a representative to act in the best interests of the consumer or power of attorney.

- (b) provide reasonable support to a Consumer who has specifically requested assistance in making and/or pursuing a Complaint.

11. A Sectoral Provider shall -

- (a) immediately acknowledge any Verbal Complaint;
- (b) seek to resolve all Complaints through or during the first contact it has with the Consumer about the Complaint;
- (c) within five (5) Business Days of a Complaint being received, formally acknowledge the Complaint in writing, presented in a hard copy or electronic form. For the avoidance of doubt this provision also applies to Verbal Complaints, which shall have been already informally acknowledged pursuant to regulation 11(a) but not to Verbal Complaints which have been resolved to the Consumer's satisfaction during the first contact with the Consumer pursuant to regulation 11(b);
- (d) as soon as practicable after completing its investigation of a Complaint, and in any event within thirty (30) days of receiving a Complaint, inform the Consumer who made the Complaint of the Sectoral Provider's proposed resolution of that Complaint;
- (e) within twenty (20) days of a Consumer indicating his/her acceptance of a resolution of his/her Complaint, which has been proposed by the Sectoral Provider, complete all actions necessary to implement that resolution unless -
 - (i) otherwise agreed with the Consumer; or
 - (ii) the actions to be completed by the Sectoral Provider are contingent on an action to be completed by the Consumer, in which case the Sectoral Provider must complete all actions to implement that resolution within twenty (20) days of the Consumer having completed his/her action; and
- (f) within five (5) Business Days of a Complaint being closed, send a written confirmation of the resolution of the Complaint to the Consumer who made it. For the avoidance of doubt this provision only applies to Complaints which have been formally acknowledged in writing pursuant to regulation 11(c).

12. (1) Where a Sectoral Provider has not agreed on a resolution of a Complaint with a Consumer following the process set out at regulation 11 above, the Sectoral Provider shall -

Commented [WAC41]: A distinction should be made between a complaint and a service issue. WAC does not accept verbal complaints, the person making a verbal complaint is acknowledged and advised to submit the complaint in writing.

While initial complaints can be made via phone, it must be followed up in writing for clarity and evidence purposes.

A service issue can be resolved over the phone and does not require the customer to submit anything in writing.

Commented [WAC42]: This appears to be in direct contradiction to what is stated in 11 (c).

Commented [WAC43]: If this applies, no record of the complaint will exist.

Commented [WAC44]: In fact, it is the consumer who has not agreed with the resolution of a complaint.

- (a) inform the Consumer that he may refer the Complaint to the Office for further consideration, as outlined in the Office's Consumer Complaints Appeals Procedure Guidelines; and
 - (b) on that Consumer's request, provide the Office with the relevant details (including all related correspondence) of the Complaint and inform the Office that the Sectoral Provider has not been able to resolve the Complaint to the satisfaction of the Consumer within the timeframe required by this regulation.
- (2) A Sectoral Provider may conclude after careful consideration by an appropriately senior member of its staff (for example a senior manager) that-
- (a) a Complaint is frivolous or vexatious;
 - (b) it can do nothing more to assist the Consumer to resolve the Complaint; and/or
 - (c) the behaviour of the Consumer is such that the Sectoral Provider does not wish to interact with the Consumer any further.
13. Where a Sectoral Provider has concluded that a complaint falls within any or all of the terms of regulation 12(2) -
- (a) it may -
 - (i) refuse to continue to process the Complaint under its complaint handling procedure; or
 - (ii) refuse to accept any further Complaint from the same Consumer on the same or any similar issue other than in the course of an external dispute resolution process; and
 - (b) it shall inform the Consumer who made the Complaint, in writing, presented in hard copy or electronic form, -
 - (i) that it does not intend to continue to process his/her Complaint under its complaint handling procedure;
 - (ii) of its reasons for reaching such a conclusion; and
 - (iii) of the options the Consumer has for external dispute resolution, including the Consumer's ability to refer the Complaint to the Office (including the Office's contact details).
14. Where a Sectoral Provider has made two (2) unsuccessful attempts, on separate Business Days, to contact a Consumer to discuss a Complaint or inform the Consumer of the Sectoral Provider's proposed resolution of the

Commented [WAC45]: Does this replace the appeals process via the Ombudsman for WAC customers?

Commented [WAC46]: If the consumer wants to continue a complaint, he/she should file their complaint with the Office including whatever documents they have and in an effort to be neutral, the Office should then request the Sectoral Provider for their comments. The onus should not be on the Sectoral Provider to provide the Office with all the information on behalf of the complainant. After all, there should have been extensive communication between the consumer and the Sectoral Provider at this stage.

Commented [WAC47]: In WA the procedure is that issues that are not resolved by staff, and their supervisor, ultimately go to the Board, but this option is not recognised in these regulations.

Commented [WAC48]: Is this not contradictory to Reg 9 (i)?

Commented [WAC49]: It appears that service issues and Complaints are lumped into one. These are two completely different items and need to be treated separately.

This does not state how these attempts should be made, but it implies a phone call. The phone call should be made to the customer's number on record, unless they have provided an alternative number when the complaint was made.

Complaint, the Sectoral Provider shall write to the Consumer at his/her last known postal address (or, if a postal address is not available, email address) -

- (a) providing details of the dates, times and methods of its unsuccessful attempts to contact him/her;
- (b) including an invitation to the Consumer to contact the Sectoral Provider within a specific timeframe of not less than **ten (10) Business Days**; and
- (c) setting out details of how the Sectoral Provider can be contacted within the timeframe specified in regulation 14(b).

Where, following the provision of a notice pursuant to regulation 14(a) Consumer has not contacted the Sectoral Provider within the timeframe specified pursuant to regulation 14(b), the Sectoral Provider may treat the Complaint to which that notice relates as closed.

15. (1) In respect of every Complaint it receives, a Sectoral Provider shall keep a record of -

- (a) the identity of the Consumer making the Complaint;
- (b) the nature of the Complaint and the issues raised as part of the complaint;
- (c) the steps taken to address the Complaint and the results of any investigation into the Complaint;
- (d) any resolution the Consumer requested in respect of the Complaint;
- (e) the proposed resolution of the Complaint made by the Sectoral Provider, including any associated commitment to do or refrain from doing any specified action, and the Sectoral Provider's reasons for proposing that resolution;
- (f) the Consumer's response to the Sectoral Provider's proposed resolution, including any reasons the Consumer provided for this response;
- (g) any action taken in consequence of the Complaint including any action taken to implement the proposed or agreed resolution to the Complaint;
- (h) copies of all correspondence sent by or to the Consumer in respect of the Complaint;
- (i) the date the Complaint was received;
- (j) the date on which the following actions were due to be and were actually carried out -

Commented [WAC50]: This contradicts what is stated in regulation 11 (c): There will not be a record of Verbal Complaints which have been resolved to the Consumer's satisfaction during the first contact with the Consumer pursuant to regulation 11(b).

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- (i) acknowledgment of receipt of the Complaint;
 - (ii) the provision of a proposed resolution by the Sectoral Provider;
 - (iii) the resolution (if any) of the Complaint; and
 - (iv) the Complaint being closed.
- (2) Information collected and recorded by a Sectoral Provider for the purposes of regulation 15 shall be -
- (a) only kept for an appropriate period of time from the date on which the Complaint was closed;
 - (b) stored and/or indexed in a manner that ensures that the Sectoral Provider is able to identify individual Complaints and their subject matter, for example by providing each Complaint with a unique reference number; and,
 - (c) stored and/or indexed in a manner that ensures the Sectoral Provider is able to manage, monitor, analyse, record and report on
 - (i) the handling and resolution of each Complaint, including, in particular, the progress made in resolving the Complaint while it is being resolved and the implementation of any actions the Sectoral Provider has offered to perform in respect of the Complaint and/or its resolution;
 - (ii) identifying any patterns or trends arising across more than one Complaint in any given twelve (12) month period, such data being so collected and recorded on an anonymised basis; and
 - (iii) compliance with the timeframes required by regulation 11.
- (3) Insofar as the information collected and recorded for the purposes of regulation 15(1) contains Personal Data relating to a Consumer, a Sectoral Provider shall ensure this is not disclosed except as provided for pursuant to the Data Protection Law, 2017 and any applicable regulations.
- (a) as required -
 - (i) pursuant to any relevant data protection conditions of the Sectoral Provider's Authorisation with the Office, and the Law; or
 - (ii) to allow the Sectoral Provider and/or the Office to manage and/or resolve a Complaint; and
 - (b) with the express consent of the Consumer.

Commented [WAC51]: It is not clear what is meant by *appropriate* period. WAC does not understand the rationale for setting a time limit on keeping a complaint. A lot of historical information will be lost if this information has to be discarded. Data protection is not an issue as this information cannot be disclosed except as provided for pursuant to the Data Protection Law.

16. (1) Within fifteen (15) Days of the end of each Quarter a Sectoral Provider shall submit a report to the Office that sets out in respect of the previous Quarter -

- (a) the number of Complaints received;
- (b) the nature of each Complaint received; and
- (c) the current status of each Complaint received during the previous Quarter, i.e. whether the Complaint has been closed and if not whether a resolution has been proposed by the Sectoral Provider and/or accepted by the Consumer.

(2) A Sectoral Provider shall record complaints, as per subsection (1), in English even where the Consumer's complaint was dealt with in another language.

(3) If an original written complaint was submitted in a foreign language, the Sectoral Provider shall attach a copy of that original complaint to the record and a translation of such complaint.

Commented [WAC52]: All complaints should be made in English only (see next comment).

Commented [WAC53]: This should not be required in WAC's view. All WAC communications are conducted in English and complaints should therefore be made in English only.

Please also note that by law 'persons from non-English speaking countries coming to work in the Cayman Islands are required to have a basic understanding of the English language to ensure they are able to perform their work duties effectively, administer themselves and their families, and assimilate quickly into the community'. Why then are the Sectoral Providers required to take complaints in another language?

Commented [WAC54]: Correct to 'complaint'

Commented [WAC55]: Once a service contract is signed, consumers become customers (account holders/ persons who signed the service contract).

PART 4 – CONTRACT TERMS

17. (1) The terms and conditions of a contract entered into by a Sectoral Provider with a Consumer shall be consistent with the provisions of these regulations and shall be -

- (a) clear;
- (b) unambiguous; and,
- (c) presented in a manner that is simple and avoids the use of unnecessary legal or technical terms.

(2) A contract entered into by a Sectoral Provider with a Consumer shall include terms and conditions specifying -

- (a) the start date of the contract;
- (b) the length of the contract;
- (c) if applicable, the minimum duration for which the contract shall last;

Commented [WAC56]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry. The majority of this section looks to be taken from a telecommunications related document and should be reviewed and reworded to apply to water, wastewater and electrical utilities. Contracts as a whole should be determined by the utility with the Office only regulating those contract terms the Office sees as absolutely necessary to regulate for good governance and that are in the best interest of the consumer. It should also be considered that the Water Authority already has Regulations which it needs to comply with and it would have been worthwhile if OfReg had taken these into consideration.

- (d) details of each Product and Service to be provided under the contract, including the levels of service that will be achieved in relation to each Product and Service;
- (e) details of how each Product and Service to be provided under the contract shall be delivered, installed and/or activated, including the length of time it will take for each Product and Service to be ready for use by the Consumer;
- (f) if applicable, the circumstances in which the Consumer shall be entitled to compensation and/or a refund of sums he has paid to the Sectoral Provider where the levels of service specified in the contract are not met, including the method of calculation of any such compensation and/or refund;
- (g) which, if any, of the terms and conditions of the contract the Sectoral Provider may vary and the procedure by which any such variation shall be carried out;
- (h) the manner in which the Consumer shall be notified of any changes to the contract;
- (i) if applicable, any requirements concerning the manner in which notices in respect of the contract shall be served by either party on the other;
- (j) the methods by which the contract may be terminated by either party;
- (k) where a minimum contract duration is specified under regulation 17(2)(c), the circumstances in which the contract may be terminated before that minimum period has expired and the method by which any such termination shall be effected;
- (l) where the Sectoral Provider may impose a charge for the termination of the contract prior to the expiry of any specified length and/or minimum duration of the contract -
 - (i) the circumstances in which any such charges shall be payable; and
 - (ii) the amount of any such charge and the method by which it is calculated;
- (m) the manner in which the contract may be renewed, including, if applicable, the circumstances in which the contract shall be renewed automatically;
- (n) the circumstances in which the Sectoral Provider may suspend or disconnect the Services provided pursuant to the contract;

Commented [WAC57]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC58]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC59]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC60]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC61]: Refer to previous comments regarding 'suspension' of the Services. Any Service is disconnected until reconnected (there is no reason for including a reference to 'suspension' of service.)

- (o) where the Sectoral Provider may impose a charge for the disconnection or subsequent reconnection of the Services provided pursuant to the contract, details of -
 - (i) the circumstances in which any such charge shall be payable; and
 - (ii) the amount of any such charge and the method by which it is calculated;
 - (p) any penalty or agreed damages that may be imposed on the Consumer under the contract, including the nature of any such item and the circumstances in which it may be imposed; where a Security Deposit is required by the contract, details of -
 - (i) the basis on and manner in which it shall be held by the Sectoral Provider;
 - (ii) how and under what circumstances it shall be refunded to the Consumer; and
 - (iii) any penalties, agreed damages and/or charges that may be applied to it and the circumstances in which these may be applied; and,
 - (iv) the availability of the Complaint handling procedure under these Regulations, including the methods by which it may be initiated.
 - (3) A provision in the contract which purports to limit the liability of the Sectoral Provider for damages caused to the consumer's person or property is void.
 - (4) A provision in the contract which purports to limit the obligations of the Sectoral Provider beyond Force Majeure are void.
18. (1) A contract entered into by a Sectoral Provider with a Consumer shall -
- where the Consumer so elects, be for no more than twelve (12) months;
 - (2) Where a contract specifies a minimum duration for which it shall last, the Consumer may terminate the contract at any point after the expiry of that specified period by providing the Sectoral Provider with a written notice, presented in hard copy or electronic form, 30 days before the required contract termination date. The Sectoral Provider shall not impose a penalty or any other charge (save in respect of any Product or Service already provided) to

Commented [WAC62]: In WAC's view these statements are far too broad and to general. WAC suggests that OfReg provides further clarification and context.

the Consumer pursuant to the contract) where the Consumer terminates the contract in such circumstances.

19. Where a Consumer has entered into a contract with a Sectoral Provider for the purchase, lease or supply of any Service and/or Product, the Consumer may cancel the contract without a penalty or any other charge for up to five (5) Business Days from the date of the contract, unless the Service and/or Product has been consumed by the Consumer by that time. The Sectoral Provider must provide a specific telephone number which the Consumer may call free of charge for this purpose.

20. (1) Where a Sectoral Provider intends to make a modification, amendment or variation to a term of a contract with a Consumer that is likely to be of material detriment to the Consumer -

- (a) the Sectoral Provider shall give the Consumer not less than one (1) months' notice, presented in hard copy or electronic form, of the proposed modification, amendment or variation;
- (b) the Sectoral Provider shall, at the same time as it provides notice to the Consumer under regulation 20(1)(a), inform the Consumer -
 - (i) that, if the proposed modification, amendment or variation is not acceptable to the Consumer, the Consumer is entitled to terminate the contract by serving the Sectoral Provider with notice during the period specified in the Sectoral Provider's notice; and
 - (ii) that no penalty or charge shall be imposed by the Sectoral Provider in consequence of the Consumer terminating the contract, save as is provided for by regulation 19.
- (c) the Consumer may, having received a notice under regulation 20(1)(a), terminate the contract forthwith by providing the Sectoral Provider with notice, presented in hard copy or electronic form, of his intention to do so at any point during the period provided for by the Sectoral Provider's notice. The Sectoral Provider shall not impose any penalty or charge on the Consumer for any such termination other than in respect of any Service already provided to the Consumer under the contract. For the avoidance of doubt, the Sectoral Provider shall not impose any penalty or charge in respect of any Product purchased by the Consumer in connection with the Services provided under the contract where the contract is terminated in these circumstances.

Commented [WAC63]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC64]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC65]: As mentioned earlier, there are repeat instances in these regulations where reference is made to 'having a telephone number available to consumers free of charge'. If this requirement is deemed necessary, would it not be more efficient to make one statement at the beginning of the regulations to that effect?

Commented [WAC66]: Who determines what 'material detriment' is?

Commented [WAC67]: This includes annual rate adjustments. This requires that OfReg approves rate adjustments in a timely manner.

Please note that the 2019 WAC rate adjustments (effective 1 July 2019, and therefore reflected on bills issued in early August 2019) were approved by OfReg on 11 July 2019, although WAC was told that "no press release shall be issued about the rates increase until OfReg advises that it's ok to do so", WAC never received any confirmation from OfReg, but found out that it was published on OfReg's website of 24 July 2019 (slightly more than one week before the bills were sent out to customers).

Commented [WAC68]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

Commented [WAC69]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

(2) For the avoidance of doubt, a change in the price of any Product or Service provided by a Sectoral Provider pursuant to a contract with a Consumer shall fall within the terms of regulation 20(1) where any such change would be to the material detriment of the Consumer, regardless of whether the proposed change has been approved or directed by the Office.

Commented [WAC70]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

21. Where a Sectoral Provider enters into a contract with a Consumer for more than one Product and/or Service that are packaged, tied or bundled, one or more of which is provided by or through a third party, the Sectoral Provider shall be fully responsible for the effective performance of the entire package, tied offer or bundle, including in particular service support, warranties, maintenance, complaints handling, dispute resolution and other administrative requirements.

Commented [WAC71]: This is not applicable to the water, wastewater or electricity industry. This is more applicable to the telecommunications industry.

22. (1) A Sectoral Provider may require a Consumer to provide a Security Deposit in respect of a Product and/or Service to be provided by the Sectoral Provider pursuant to a contract with the Consumer where the outcome of a credit assessment conducted in relation to the Consumer and the Product and/or Service to be provided indicates the provision of a Security Deposit would be reasonable and appropriate in all the circumstances. Any such Security Deposit shall -

- (a) be reasonable in all the circumstances; and
- (b) not exceed the charges the Sectoral Provider reasonably anticipates the Consumer will incur in respect of the Product and/or Service to be provided in any period of one (1) month.

Commented [WAC72]: Who determines 'reasonable' and how does this compare to 22 (1)(b).

(2) Where a Sectoral Provider requires a Consumer to provide a Security Deposit pursuant to regulation 22(1), the Sectoral Provider shall -

- (a) prior to the collection of any such Security Deposit -
 - (i) provide the Consumer with information about the terms under which the Security Deposit will be held, including in particular the circumstances in which it may accrue interest, be forfeited (in full or in part) or be repaid; and
 - (ii) obtain the Consumer's contract to the circumstances in which the Security Deposit shall be forfeited (in full or in part). Where contract cannot be reached, the Sectoral Provider may decline to enter into a contract with the Consumer or decline

Commented [WAC73]: The Water Authority Regulations stipulate the deposit amounts (Security Deposit). What happens if the WA Regulations and these regulations are in conflict?

Additionally, WAC require Personal Guarantees for each signatory for companies and strata's (e.g. company directors, strata president etc.). In lieu of personal guarantees WAC will accept larger Security Deposits, these increased Security Deposit amounts were determined after evaluating the risk to WAC. However, these do not meet the requirements of regulation 22 (1)(b).

Thus, this particular regulation is not workable with its current wording.

to supply a particular Product or Service to the Consumer,
and

Commented [WAC74]: This sentence is very confusing. What is the intent?

(3) within **ten (10) Business Days** of receiving the Security Deposit, inform the Consumer in writing of the account to which the Security Deposit shall be applied; and

(4) repay to the Consumer the amount of the Security Deposit (or the balance then remaining) along with any interest accrued in relation to it within **ten (10) Business Days of the Consumer -**

Commented [WAC75]: This may not be practical considering the administrative process that needs to be completed. WAC's current process of deposit refund takes more than 10 days.

(i) satisfactorily completing the terms of the Security Deposit arrangement; or,

(ii) ceasing to receive from the Sectoral Provider the Product or Service in respect of which the Security Deposit was required.

Commented [WAC76]: Amend this to 'terminating the account with the Service Provider in respect of which the Security Deposit was required.'

23. (1) An accepted copy of a signed contract, or where the contract was entered into other than by a physical signature, entered into by a Sectoral Provider with a Consumer for the provision of Services shall be supplied or made available to the Consumer -

- (a) when the contract is entered into;
- (b) in print and/or electronic form, as opted for by the Consumer; and
- (c) on request by the Consumer, at any other point in time, subject to Regulation 3(8).

Commented [WAC77]: This is an incorrect reference. Regulation 3(8) does not exist.

(2) Where a Consumer requests an additional copy of a contract entered into with a Sectoral Provider pursuant to regulation 23(1)(b) in print form, the Sectoral Provider may require the Consumer to pay a fee before providing any such copy. Any such fee must be reasonable in all the circumstances.

Commented [WAC78]: Amend this to 'regulation 23(1)(b) and 23(1)(c)'.

PART 5 – BILLING

24. (1) Before or at the same time that it issues the first Bill to a Consumer, a Sectoral Provider shall advise the Consumer in general terms of-

- (a) the amount of time the Consumer has to pay for the provision of the Sectoral Provider's Services and the Consumer's obligation to pay a Bill for these Services by the specified date;
- (b) if applicable, the Sectoral Provider's processes for -

- (i) Interim Billing;
 - (ii) changes in the Billing Period; and
 - (iii) following up overdue Bills;
 - (c) the effect of partial payment of a Bill;
 - (d) whether or not the Sectoral Provider charges interest on late payments (such interest to be reasonable);
 - (e) the method used by the Sectoral Provider for allocating amounts received in the event of partial payment of a Bill; and,
 - (f) the effect of non-payment and/or late payment of a Bill, including that this may lead to the Suspension and/or Disconnection of current and/or future Services.
25. Every Bill issued by or on behalf of a Sectoral Provider shall include, at least -
- (a) the Consumer's name and address;
 - (b) the Sectoral Provider's current business name and address;
 - (c) a clear and specific form of identification for the Bill, for example a unique reference number;
 - (d) the Bill's date of issue;
 - (e) details of the period of time to which the Bill relates;
 - (f) details of all credits, charges, interest and general payments due to or owed by the Consumer for the period to which the Bill relates, including a clear description of the items or Services to which any such credits, charges, interests or payments relate;
 - (g) where requested, and free of charge, itemised details of each credit, charge, interest and payment due to or owed by the Consumer for the period to which the Bill relates;
 - (h) details of any discounts applicable and/or applied to the sums contained in the Bill;
 - (i) the net amount payable by the Consumer or repayable by the Sectoral Provider;
 - (j) the date by which any payment or repayment shall be made;
 - (k) methods by which the Consumer can contact the Sectoral Provider free of charge (including at least a telephone number and electronic mail address) to -

Commented [WAC79]: Who determines 'reasonable'? Additionally, interest rates are stipulated by the Water Authority Regulations, therefore WAC suggests amending this to '(such interest shall be reasonable or as per relevant statutes)'.

Commented [WAC80]: Refer to previous comments regarding 'suspension' of the Services. Also, how can future Services be disconnected?

Commented [WAC81]: It is not practical for WAC to issue customised bills to individual customers (WAC has nearly 20,000 customers).

Commented [WAC82]: See previous comments on free of charge telephone numbers.

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- (i) make enquiries and/or request clarification about the Bill or billing more generally; or
 - (ii) express dissatisfaction and/or make a Complaint about the Bill or billing more generally;
 - (l) in respect of each of the methods of contact listed pursuant to regulation 25(k), details of -
 - (i) its hours of operation; and
 - (ii) any charges the Consumer may incur by its use.
26. Every Bill issued by or on behalf of a Sectoral Provider shall -
- (a) be formatted in such a way that a Consumer can easily read and understand it;
 - (b) be available in more than one medium, at least one of which, shall be the medium in which the Sectoral Provider issues and provides Bills to its Consumers as a matter of course;
 - (c) contain charges and information that is, in so far as is possible, up to-date and accurate. In order to secure compliance with this regulation, a Sectoral Provider shall put in place appropriate systems and safeguards to ensure inaccuracies in Bills are minimised;
 - (d) contain charges and information that are verifiable;
 - (e) be produced and sent to the Consumer by the Sectoral Provider within thirty (30) days of the last day of the Billing Period to which it relates unless -
 - (i) the Sectoral Provider has been made aware of and is in the process of dealing with a dispute over a charge, credit, interest or payment that is to be included in the Bill, in which case the Bill shall be issued as soon as is practicable after the resolution of any such dispute;
 - (ii) a problem has occurred with the Sectoral Provider's billing system, in which case the Bill shall be issued as soon as is practicable after the problem has been resolved or within such time period as the Office shall specify; and
 - (iii) other circumstances beyond the reasonable control of the Sectoral Provider delay its production and/or dispatch to the Consumer.
27. (1) A Sectoral Provider shall ensure the Consumer is able to obtain from the Sectoral Provider -

Commented [WAC83]: Again, these regulations do not distinguish between service issues and complaints.

Commented [WAC84]: In WAC's view that is a lot of information to be included on the bills. A lot of this information can be provided on the website etc. Why does the service provider need to provide hours of operation on bill or charges if certain contact methods are used by the customer?

Commented [WAC85]: WAC's statute requires payment of all outstanding amounts, even if in dispute. Otherwise this provides a way to delay payment, whilst still obtaining the service.
Payment agreements are available to assist customers who are not able to pay substantial bills.

Commented [WAC86]: This is unnecessary as it is in the Service Provider's best interest to issue a bill ASAP. How is the Office better equipped to specify when a bill must be issued?

- (a) information relevant to his/her current Bill or any item contained in it;
 - (b) sufficient information for him/her to be able to verify the charges and information contained in his/her current Bill;
 - (c) his/her Bill or any Billing information in a format he is able to store and reproduce;
 - (d) upon request, a fully itemised Bill in the format of his choice that he is able to store and reproduce;
 - (e) clear verbal and/or written advance notice in relation to any charges, which shall be reasonable in the circumstances, that may be associated with obtaining a physical copy of a fully itemised Bill;
 - (f) confirmation of any payment he has made pursuant to a Bill, by at least –
 - (i) including acknowledgement of any such payment on the next Bill issued by the Sectoral Provider; and
 - (ii) providing confirmation of any such payment over the telephone (the Sectoral Provider shall provide a specific telephone number which is free of charge from any local network that can be used for obtaining such confirmation);
 - (g) where the Sectoral Provider has agreed with the Consumer that itemised details of all credit, charges, interests and payment due from or owed to the Consumer in any given Billing Period shall not be provided on each Bill, details of the notice period the Consumer will need to give the Sectoral Provider to receive Bills containing such itemisation;
 - (h) details of the methods by which the Consumer can make a payment in respect of a Bill, at least one of which must be free of any processing or administrative charge;
 - (i) details of the terms and conditions associated with each available method by which the Consumer can make a payment in respect of a Bill;
 - (j) details of the Sectoral Provider's payment and debt collection processes.
- (2) Unless otherwise specified by this regulation or requested by a Consumer, a Sectoral Provider may satisfy a requirement under this regulation to make available and/or provide information by providing it in a Bill.

Commented [WAC87]: The Bill is issued in hard copy and/or electronic format. The intent cannot be that the customer can dictate that a bill needs to be provided in a specific format (i.e., Excel spreadsheet, Word file etc.).

Commented [WAC88]: Why is this necessary? A customer paying online gets a confirmation at the time of payment and if paid at WAC office the customer gets a receipt.

Commented [WAC89]: See previous comments on free of charge telephone numbers.

Commented [WAC90]: It is not practical to issue customised bills to individual customers (WAC has nearly 20,000 customers).

Commented [WAC91]: It is not practical to customise bills on the request of individual customers.

(3) A Sectoral Provider shall ensure that any information it makes available and/or provides pursuant to this regulation is -

- (a) accurate;
- (b) up to date;
- (c) presented in a manner that is simple, clear and avoids the use of unnecessary legal or technical terms; and
- (d) made available and/or provided in a timely manner.

28. Save as expressly provided for by this regulation, a Sectoral Provider shall not charge a Consumer for issuing a Bill or for providing information relating to a Bill or billing more generally, which the Sectoral Provider is required to make available and/or provide under this regulation. In particular -

- (a) where a Sectoral Provider makes available and/or provides any such information via telephone, it shall provide access to the relevant telephone free of charge from any local telephone network; or
- (b) where a Sectoral Provider makes available and/or provides any such information in an electronic form, it must offer at least one method of accessing that information that does not involve the Consumer incurring a charge.

29. Where a Consumer requests information that the Sectoral Provider is not required to provide under this regulation, a Sectoral Provider may impose such charge as would be reasonable in all the circumstances. Before any such charge is incurred and/or imposed, a Sectoral Provider shall -

- (a) inform the Consumer of any applicable charge; and
- (b) obtain the Consumer's consent to any charge being incurred and/or imposed.

30. Where a Consumer refuses to consent to any charge referred to in regulation 29(a) being incurred and/or imposed, a Sectoral Provider may refuse to provide the information requested.

31. Where a Consumer requests a Bill in an alternative and/or additional medium to the medium in which the Sectoral Provider issues and provides Bills to its Consumers as a matter of course and/or has previously been issuing and providing Bills to that Consumer, the Sectoral Provider may impose a charge for the provision of a Bill in the medium requested. Prior to imposing any such charge a Sectoral Provider shall inform the Consumer of -

Commented [WAC92]: See previous comments on free of charge telephone numbers.

Commented [WAC93]: This is not practical. If on WiFi it is free, but if the customer uses data, is the Service Provider required to reimburse the customer? How can it be verified that the customer incurred costs?

Commented [WAC94]: If a consumer makes such a request for an alternative medium and is willing to pay for it that does not necessarily mean that the utility will be able to provide the requested medium.

- (a) the amount of the charge to be imposed; and
- (b) the method by which the amount of the charge to be imposed has been calculated.

32 Where provided for in these regulations, where a Sectoral Provider intends to change -

- (a) its Billing Medium, it shall provide its Consumers with written notice of the proposed change and any options available to a Consumer in relation to that change, no less than thirty (30) days before it intends to implement the change and, as a minimum, via the same method it provides a Bill for that service; and
- (b) its Billing Period, it shall provide its Consumers with written notice of the proposed change and any options available to a Consumer in relation to that change, no less than two (2) current Billing Periods before it intends to implement the change and, as a minimum, via the same method it provides a Bill for that service.

33 A Sectoral Provider shall not include a charge or payment due in a Bill after three (3) months from the end of the Billing Period in which the relevant Product or Service giving rise to the charge or payment due was provided to the Consumer.

34 Any fee charged by a Sectoral Provider in consequence of late and/or non-payment of a Bill by a Consumer, whether for reconnection or otherwise, shall -

- (a) be reasonable in all the circumstances;
- (b) be proportionate to the cost, if any, incurred by the Sectoral Provider as result of the late and/or non-payment; and
- (c) not represent or cause an inordinate burden to the Consumer.

35 (1) A Sectoral Provider shall provide a Consumer with a reasonable period of time, of no less than the shortest of one half the length of the Sectoral Provider's Billing Period or fourteen (14) days, in which to pay a Bill without any late payment penalty being applicable.

(2) A Sectoral Provider shall not take any measures to effect payment from a Consumer who has not paid all or part of a Bill in respect of a Service provided by the Sectoral Provider the result of which is disproportionate and/or unduly discriminatory.

Commented [WAC95]: This does not provide for exceptional circumstances such as the Sectoral Provider being unable for any reason to gain access to read the meter, etc. In the event of an illegal connection, under this regulation the Sectoral Provider can only recoup losses for a period of three months. This provision appears not to be practical.

Commented [WAC96]: Late fees (late charges) are stipulated in the Water Authority Regulations, therefore suggest amending 34 (a) to 'be reasonable or as per relevant statutes'.

Commented [WAC97]: Late fees should be assigned objectively, and the personal situation of the customer should be irrelevant. What happens if the late fees are reasonable and proportionate, but are considered burdensome by the customer?

Commented [WAC98]: What does 'disproportionate' or 'unduly discriminatory' mean? Is disconnection for non-payment deemed disproportionate, if clearly stated in the service contract?

(3) Where a Sectoral Provider has not received payment of an outstanding and undisputed balance on a Consumer's account within thirty (30) days of the payment falling due, the Sectoral Provider -

(a) shall provide the Consumer with a first notification, presented in hard copy or electronic form, that the payment is overdue; and

(b) may Restrict the Consumer's access to its Services.

Commented [WAC99]: See earlier comment on 'restrict', which is not really applicable to the water, wastewater or electricity industry. Either a service is present or not, it cannot be 'restricted'.

(4) Where a Sectoral Provider has not received payment of an outstanding and undisputed balance on a Consumer's account within forty-five (45) days of the payment falling due, the Sectoral Provider -

(a) shall provide the Consumer with a second notification, presented in hard copy or electronic form, that the payment is overdue; and

(b) may Suspend the Consumer's Services. Prior to any such Suspension the Sectoral Provider shall, no less than five (5) Business Days before the proposed Suspension is intended to take effect, provide the Consumer with a notice, presented in hard copy or electronic form, that clearly sets out -

Commented [WAC100]: Refer to earlier comments on "disconnect", "restrict", "suspend" and "suspension". This terminology should be amended (or removed) to better reflect the water, wastewater and electricity industry.

- (i) the amount owed;
- (ii) the total amount that has to be paid to avoid Suspension of the Services;
- (iii) the date by which payment has to be received to avoid Suspension of the Services;
- (iv) the methods by which payment can be made;
- (v) the date on which Suspension will take effect in the absence of payment; and
- (vi) details of any on-going and/or additional charges that will apply while the Services are Suspended.

Commented [WAC101]: In view of the notice of 5 business days (starting when?), providing a customer with a hard copy is impractical due as local mail delivery can take more than 5 business days.

(5) Where a Sectoral Provider has not received payment of an outstanding and undisputed balance on a Consumer's account within sixty (60) days of the payment falling due, and any Security Deposit paid by the Consumer has been exhausted, the Sectoral Provider may Disconnect the Consumer's Services. Prior to any such Disconnection, the Sectoral Provider shall, no less than five (5) Business Days before the proposed Disconnection is intended to take effect, provide the Consumer with a notice, presented in hard copy or electronic form, that clearly sets out -

(a) the amount owed;

Commented [WAC102]: As there is no difference between "suspend" and "disconnect", almost the entire regulation 35(5) is an unnecessary duplication of regulation 35(4).

- (b) the total amount that has to be paid to avoid Disconnection of the Services;
 - (c) the date by which payment has to be received to avoid Disconnection of the Services;
 - (d) the methods by which payment can be made;
 - (e) the date on which Disconnection will take effect in the absence of payment;
 - (f) that, if the Services are Disconnected, the Consumer's current service plan, Product and/or telephone number may not be available if he subsequently seeks to Reconnect the Services that have been Disconnected;
 - (g) that a reconnection fee may be payable if the Services are Disconnected and the Consumer subsequently seeks to Reconnect them;
 - (h) that the debt may be passed to a collection agency;
 - (i) how much any new deposit would be; and
 - (j) that legal action may be taken to recover the unpaid debt.
- (6) A Sectoral Provider shall, on the request of a Consumer, conduct a review of a decision to Restrict, Suspend or Disconnect the Services it provides to the Consumer and inform the Consumer -
- (a) that the review will be started within two (2) Business Days of the date of the request;
 - (b) that the review will be completed within five (5) Business Days of the start of the review;
 - (c) of the outcome of the review; and
 - (d) where the Consumer remains dissatisfied following the completion of the review, of his ability to make a Complaint and the way in which any such Complaint can be made.
36. A Sectoral Provider shall not impose a reconnection fee on a Consumer where the Services provided to the Consumer have been Restricted, Suspended or Disconnected as the result of a mistake on the part of the Sectoral Provider. For the avoidance of doubt this includes a mistake regarding whether the Consumer has paid a Bill or part of a Bill within the provided time period.
37. A Sectoral Provider shall ensure its Credit Management processes are fair to Consumers. In particular, a Sectoral Provider shall -

Commented [WAC103]: This is not applicable to the water, wastewater or electricity industry. This is only applicable to the telecommunications industry.

Commented [WAC104]: Why is it necessary to review the process as the process is clearly laid out, and documented, in regulation 35(3) through 35(5)?

In any event, if a customer thinks that he/she should not have been disconnected, this can be approached as a normal customer query issue.

There is generally no need for a decision review as the list of collection customers for disconnection are automatically determined by the algorithms of the billing system.

Commented [WAC105]: Refer to earlier comments on "restrict", and "suspend".

Commented [WAC106]: The provided time period is dependent on the bill payment option and the associated processing time (i.e., this time period varies between the various payment options).

- (a) not take Credit Management Action in respect of a sum that is the subject of an unresolved Complaint (i.e. one that is still being investigated by the Sectoral Provider, the Office or another recognised third party and/or one in respect of which the Consumer has not agreed to a proposed resolution), until the Complaint has been resolved;
- (b) ensure no debt sold and/or assigned to a third party includes a sum that is the subject of an unresolved Complaint (i.e. one that is still being investigated by the Sectoral Provider, the Office or another recognised third party and/or one in respect of which the Consumer has not agreed to a proposed resolution);
- (c) inform a Consumer when it is intending to commence any Credit Management action in respect of a sum which has previously been disputed by the Consumer and/or been the subject of a Complaint, such dispute and/or Complaint having been resolved;
- (d) where part of an amount of a Bill is the subject of an unresolved Complaint, inform the Consumer that Credit Management Action may be taken in relation to those amounts that are not the subject of that Complaint;
- (e) resolve a Complaint about a Bill, part of a Bill or Service provided by the Sectoral Provider, made by a Consumer after a debt in respect of that Consumer has been sold and/or assigned to a third party; and
- (f) may impose a charge on a Consumer for Credit Management Action taken in respect of him/her. Any such charge shall not exceed the costs incurred by the Sectoral Provider in taking the Credit Management Action and shall not be imposed unless and until five (5) Business Days after the Sectoral Provider has informed the Consumer of the amount of any such charge and the method by which it has been calculated.

Commented [WAC107]: As mentioned earlier, this is not practical. WAC requires payment of all outstanding amounts, even if in dispute as per relevant Water Authority statute. Otherwise this provides a way to delay payment, whilst still obtaining the service. Payment plan agreements are available for customers in this situation.

Commented [WAC108]: WAC is not aware that you can sell or assign local debt to third parties within the Cayman Islands.

Commented [WAC109]: As mentioned earlier, WAC requires payment of all outstanding amounts, even if in dispute.

Commented [WAC110]: How can the Sectoral Provider resolve a complaint after a debt has been sold to third parties?

PART 6 – SERVICE PROVISION AND FAULT REPAIR

38. (1) A Sectoral Provider shall provide Services to a Consumer within the timeframe agreed with the Consumer unless the provision of such Services is delayed by -

- (a) a lack of infrastructure in the relevant service area, in which case-
 - (i) the Sectoral Provider shall estimate and inform the Consumer of the timeframe in which the Services shall be provided; and
 - (ii) the Consumer may refer the matter to the Office, which may on receipt of the Consumer's request direct the Sectoral Provider to take a particular course of action and/or ensure the Services are provided by a specified date.
- (2) In respect of Services to be provided to new Consumers, credit checks, in which case the delay shall be limited to five (5) Business Days from completion of a credit check or, in the case of a Consumer who has been identified as not creditworthy, from the completion of a credit check and the implementation of appropriate safeguards regarding the provision of the Services to that Consumer. For the avoidance of doubt, the Sectoral Provider shall not be responsible for delays in respect of the provision of Services caused by non-receipt of credit history information from the Consumer;
 - (a) a Force Majeure; or
 - (b) the failure of the Consumer to perform any act or obligation that he is required to perform prior to the Sectoral Provider providing the Services.
- (3) Where a Sectoral Provider is unable to provide a Service to a Consumer within the timeframe required by regulation 38(1) it shall inform the Consumer of the delay and keep the Consumer informed of the progress being made in arranging for the provision of the Service.

39. (1) A Sectoral Provider shall ensure a Consumer is able to report faults with, and interruptions to, a Service being provided to the Consumer by the Sectoral Provider twenty-four (24) hours a day, seven (7) days a week free of charge from any local telephone network.

(2) A Sectoral Provider shall repair any fault with a Service it provides in accordance with the relevant fault repair standards as may be notified to the Sectoral Provider by the Office from time to time.

40. (1) A Sectoral Provider shall give its Consumers notice of any planned or anticipated disruptions and/or outages to its Services at least seven (7) days in advance of such disruption and/or outage, which notice, presented in hard copy or electronic form, shall include -

- (a) the date and time of the disruption and/or outage;

Commented [WAC111]: Section 6 of The Water Authority Law clearly states that the provision of water supply and wastewater services is the duty of the Authority, where such scheme is *rational as determined* by the Authority.

Commented [WAC112]: Is this applicable? Who does credit checks in the Cayman Islands?

Commented [WAC113]: See previous comments on free of charge telephone numbers.

Commented [WAC114]: That seems to be too long a notice period. Three business days is more practical. Also, if due to circumstances (e.g., weather) such disruption and/or outage has to be delayed, no additional notice period should be required.

Commented [WAC115]: This is not practical for disruptions of a large area and/or where a large number of customers will be affected, as not all customers have email, and having to hand deliver notices is not feasible. Radio announcements are more efficient and should be sufficient. Social media should also be included.

- (b) the length of time it is anticipated the disruption and/or outage will last;
 - (c) the Service and/or particular service areas that will be affected by the disruption and/or outage; and
 - (d) any compensation or other remedy that may be available to Consumers as a result of the disruption and/or outage.
- (2) Where an unexpected event and/or Force Majeure causes a disruption to and/or the outage of the provision of a Sectoral Provider's Service, a Sectoral Provider shall use its best endeavours to-
- (a) as soon as it becomes aware of any such disruption and/or outage, give notice, in a convenient form, of the disruption and/or outage to the Consumers who are likely to be affected by it; and
 - (b) rectify the fault within the shortest possible time in all the circumstances.
41. (1) The Sectoral Provider is required to fit a Meter to all un-metered consumers who request one within thirty (30) working days of receiving the consumer's order.
- (2) If a consumer's Meter is faulty, the Sectoral Provider will repair or replace it within twenty (20) working days of being informed by the consumer.
- (3) The Sectoral Provider shall make all provisions to own and maintain metering equipment suitable and necessary for measuring the Services supplied.
- (4) All consumer's Meters measuring services shall be checked for accuracy before installation and periodically thereafter on a scheduled or sample basis as determined by the Sectoral Provider.
- (5) Meters shall be considered accurate when they measure within two percent (2%) plus or minus when tested at full load. No Meter shall be kept in service that registers usage under no load conditions.
- (6) Meter Reading shall be accomplished as nearly as practicable on a thirty (30) day or monthly basis.
- (7) In circumstances beyond the reasonable control of the Sectoral Provider, where the regular thirty (30) day Meter Reading and/or Bill issuance cannot be performed, the Sectoral Provider has the responsibility to provide at least one (1) Bill approximately every three (3) months and will guarantee to read customers

Commented [WAC116]: This is not applicable to the water, wastewater or electricity industry.

Commented [WAC117]: This is unnecessary. All water and electricity services are already provided via a meter. (i.e., there are no un-metered customers (except persons who illegally connected to the water or electricity supply, but they are not consumers, as defined).

Furthermore, it is not necessary to install meters on a wastewater service connection as wastewater charges are not based on volume.

Commented [WAC118]: This entire regulation 41 is not workable in its current proposed form. It is not reasonable and practical to have blanket meter accuracy requirements etc. across various utility industries.

Accuracy limits are determined by the relevant authority (ISO, AWWA, BS etc. for water meters; and similar authorities exist for the electricity industry).

All water meters are checked for compliance with the relevant standards before they leave the factory (the industry standard for testing water meters is at three flow rates : low, medium and high).

WAC has detailed meter accuracy and testing procedures for its water meters and how to deal with water meters that are out of specification. CWC, CUC, and Cayman Brac Power & Light should have as well. WAC recommends that OfReg reviews existing procedures for adoption, instead of utilising a blanket approach.

Commented [WAC119]: Meter reading dates vary due to weather conditions, public holidays etc.

Meter at least once every three (3) months as long as it can be accessed during the period of exceptional circumstances.

(8) If the Sectoral Provider is unable for any reason to gain access to read any meter, or for any other reason the Sectoral Provider is unable to obtain a Meter Reading, the consumption and demand shall be estimated by the Sectoral Provider, based on the average of the last three (3) readings.

(9) The Sectoral Provider has the responsibility to alert the consumer within one Billing Period, when consumption increases by at least fifty percent (50%).

(10) If a consumer's meter needs to be changed, the Sectoral Provider is required to leave written details of the date of the change, Meter Readings on the day and serial numbers of the new Meter.

(11) The Sectoral Provider will exercise all reasonable means to assure accurate computation of all monthly service Billings. When errors do occur and are discovered, the error will be corrected for future Billings and the following policy guidelines will be used to make billing corrections:

(a) If the error resulted in the consumer being overcharged and overpaying for utility service, the Sectoral Provider shall reimburse the consumer for overpayments. The reimbursement will be calculated based on the overcharges for which the Sectoral Provider had a record for a period not to exceed six years immediately prior to the discovery of the error.

(b) For consumers who were undercharged and have underpaid for utility services due to Billing errors, the Sectoral Provider will not issue a Bill for past undercharges. The provisions of this policy apply to mechanical or data errors that result through no fault of the customer and where, in the opinion of the Sectoral Provider, it is reasonable to assume that the customer is unaware of the error. This does not apply to customers who have intentionally or unintentionally bypassed any Billing Meter, provided any form of Billing information resulting in undercharges or have in any way.

(c) The Sectoral Provider shall not collect interest on undercharges and shall not pay interest on overpayments.

Made in Cabinet the [...] day of [...], 20XX

Commented [WAC120]: This cannot work if there have been multiple off-readings in a short period of time. Estimates of consumption should be based on a historical average (an average based on the previous 6-12 months is much more equitable). Each Sectoral Provider may have their own policy regarding estimating bills.

Commented [WAC121]: This appears not to be practical. Rather than one billing period, this should be over three month period minimum. If not, something as simple as a customer returning from vacation results in increased consumption compared to the period they were off and would trigger the need for a notification. The customer must be encouraged to take responsibility for monitoring his/her consumption by checking meter reading themselves. The WAC does carry out Fail Audits to ensure meter reading accuracy, and as a service to customers to identify possible leaks.

Commented [WAC122]: It is not clear where the details are supposed to be left for the customer. It appears to be more practical to send such details by mail.

Commented [WAC123]: If a bill was estimated, as per regulation 41(8) the consumer may have been undercharged, but now the difference cannot be charged once a physical reading is done that confirms higher consumption. That is not fair to the Sectoral Provider.

Commented [WAC124]: How can a consumer unintentionally bypass a Billing Meter? That is basically an illegal connection and it cannot be the intention of this regulation to sanction illegal connections.

Commented [WAC125]: Something is missing at the end of this sentence.

[]

Clerk of the Cabinet



4th September, 2020

Utility Regulation and Competition Office
85 North Sound Rd
Alissta Towers, 3rd Floor
P.O. Box 2502
Grand Cayman KY1-1104
Cayman Islands

E-mail: consultations@ofreg.ky

Dear Sirs,

Re: Consultation E&U 2020– 3 – Consultation regarding the draft Consumer Protection Regulations in relation to the Electricity, Water and Wastewater (E&U) sectors (the “Consultation”)

As a service provider and therefore major stakeholder in the Water Sector we write in response to the Consultation. Our detailed comments are contained in the attached table which form part of our responses to the questions raised.

We now turn to address the specific questions raised in the Consultation:

Question 1: What are your views on Part 2 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers have adequate information to make informed decisions when selecting E&U services and E&U Sectoral Providers? If not, please explain in detail the changes required to achieve this objective.

CWC Response: *We refer you to our detailed comments in the attached table.*

Question 2: What are your views regarding the means by which the Sectoral Providers will be obligated to ensure the provision of information under clause 3 of the proposed Draft Regulations?

CWC Response: *We refer you to our detailed comments in the attached table.*

Question 3: What are your views on Part 3 of the Draft Regulations? Will the proposed regulations, in your view, enable E&U Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously? If not, please explain in detail the changes required to achieve this objective.

CWC Response: *We refer you to our detailed comments in the attached table.*

Question 4: What are your views on the proposed time periods in relation to when consumers can file a complaint, as outlined in clause 8?

CWC Response: *We refer you to our detailed comments in the attached table.*



Question 5: What are your views on Part 4 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, simple and fair terms and conditions for the provision of products and services? If not, please explain in detail the changes required to achieve this objective.

CWC Response: *We refer you to our detailed comments in the attached table.*

Question 6: Please provide your thoughts regarding the mandatory terms and conditions, that should be included in every contract, as outlined in clause 23(2).

CWC Response: *We refer you to our detailed comments in the attached table.*

Question 7: What are your views on Part 5 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers and E&U Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.

CWC Response: *Yes, subject to our detailed comments in the attached table.*

Question 8: What are your views on Part 6 of the Draft Regulations? Will the proposed regulations, in your view, ensure E&U Sectoral Providers resolve network faults in an efficient and timely manner? If not, please explain in detail the changes required to achieve this objective.

CWC Response: *We refer you to our detailed comments in the attached table.*

Question 9: Is there potential for consumer harm that has not been identified in this paper which warrants regulated consumer protection?

CWC Response: *We are not aware of such further potential for harm to consumers.*

Question 10: Do you agree that the proposed Draft Regulations will achieve the outcome of improved redress for consumers?

CWC Response: *We agree that it will, subject to our detailed comments in the attached table.*



Question 11: Please provide your views on any other matters you consider relevant to this Consultation.

CWC Response: *We are concerned that the Consultation appears to be based on the power of the Office conferred by section 111(2)(e) the Utility Regulation and Competition Law ("URCL") to make regulations relating to "quality standards", and to have ignored the specific provisions of the URCL (Part 9) and the Water Sector Regulation Law ("WSRL") (Part 5) that pertain to consumer protection, the subject of these Regulations.*

Part 5 of the WSRL provides, inter alia, that Service providers shall use their best endeavours to ensure that their services are...rendered in accordance with this or any other Law, concessions and licences and to the standards reasonably expected of a competent provider of those services. However, the draft Regulations appear to take no account of the provisions of concessions, licences and draft licences and in a number of areas seek to override them. We find this egregious, particularly in cases where the relevant terms of a draft licence have been negotiated in good faith over a number of years with the Office and agreed. Two key areas in this respect is the ability to disconnect water supply from delinquent customers and the definition of Force Majeure. Related to this is the fact that in a number of areas we have identified in our comments in the attached table the draft Regulations are simply not appropriate for the Water Sector and appear simply to have been adopted from Regulations for the Information and Communications Technology Sector.

Generally, we are concerned that the Office proposes to adopt a high-handed and arbitrary approach where it can simply give directions to Sectoral Providers without the benefit of the appropriate decision-making process notwithstanding its obligation under section 6(4)(e) of the URCL to "engage in reasoned decision-making, based on the administrative record".

Yours faithfully,

A blue ink signature, appearing to read "M. Thomaz", is written over a horizontal line that extends to the right.

Manuel Thomaz

General Manager

Cayman Water Company Limited

Regulation	CWC COMMENTS ON THE DRAFT UTILITY REGULATION AND COMPETITION OFFICE (CONSUMER PROTECTION) REGULATIONS
PART 1 - PRELIMINARY	
Regulation 2 (Definitions)	<p>The definition of "Consumer" appears to be arbitrary is not supported by either the Utility Regulation and Competition Law ("URCL") or the Water Sector Regulation Law (the "WSRL"). CWC does not consider that someone who simply enquires about water supply should be called a consumer, and that position is supported by both the URCL and the WSRL. Part 9 of the URCL contemplates that the Office may adopt Consumer Protection Codes but these are to govern the relationship between the Sectoral Provider <u>and its customers</u>. In particular, section 59 states that "the Office may produce Consumer Codes of practice which will serve as the minimum guidelines to govern the relationship between the sectoral providers and their customers". The Office's duty to protect the short and long-term interests of consumers in relation to utility services should be understood accordingly. Section 3(4)(c) of the WSRL similarly states that the Office shall carry out the functions and exercise the powers conferred upon it under this Law in a manner which protects the interests of consumers, but the WSRL explicitly defines "consumers" as "a person who is a customer of a service provider". Furthermore, commercial customers are excluded by the definition of consumers. It follows that the Office would not by these Regulations be fulfilling its statutory function of protecting the interests of consumers if a large class of consumers are excluded.</p> <p>"Force Majeure" is defined to mean <i>"an unforeseen and uncontrollable force or event outside the reasonable control of the party affected by that event, including but not limited to one or more of the following: fire, flood, earthquake, natural disaster, war, strike, lockout, riot, explosion, insurrection, terrorism, government action or any exercise of emergency powers by any governmental authority"</i>. CWC objects to this definition which is more restrictive than the definition that the Office insisted on in CWC's draft Licence which is as follows:</p> <p><i>"Force Majeure" means an event or circumstance which prevents the Company from performing its obligations under this Licence, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the Company, and which the Company is unable to overcome or avoid or cause to be avoided through the exercise of due diligence. Events of Force Majeure may include, but are not limited to</i></p> <p>(a) <i>acts of God; fire; flood; earthquake; war; riots; acts of terrorism; strikes, walkouts, lockouts and other labour disputes; requirements, actions or</i></p>

	<p><i>failure to act on the part of governmental authorities; adoption or change in any law, regulation, statute, rule or regulation imposed by governmental bodies, including, without limitation, a change in the interpretation thereof;</i></p> <p><i>(b) any lawful order by any court or administrative agency (so long as the Company has not applied for or assisted in the application for such court or governmental action).</i></p> <p>There are two definitions of "Sectoral Provider". The second definition is circular and has an extra word - "Sector" and refers to "Licensee" which is not defined in the draft Regulations. The Office should consider using the term "utility services" (as defined in the Law) and "networks operated or services provided by a sectoral provider" in place of the new term, "Services".</p> <p>The definitions of "Restrict" and "Suspend" should be deleted and the definition of "Disconnect" should be revised in accordance with our comments on Regulation 35 below.</p>
PART 2 – PROVISION OF INFORMATION	
Regulation 3	<p>Regulation 3(1)(b) appears to be incomplete as it is unhelpful as it currently reads.</p> <p>Regulation 3(1)(c) appears to require that CWC provide on its website a facility that consumers can enter into a contract online. We object to this as it presents an array of problems not encountered when a consumer must present themselves in person in order to enter into a contract.</p> <p>Regulation 3(2)(c) does not flow from the main paragraph "shall be-". "Truth in Advertising Rules" is not defined.</p> <p>Regulation 3(3)(c). CWC is concerned about the scope of this Regulation. It is not clear whether it will require it to provide contracts in Braille, for example. It is also not clear where CWC would need to provide audible format. A blind person cannot read and navigate a website.</p>
Regulation 4	Regulation 4(1)(c), (d), (g) and (h), and Regulation 4(2) are not appropriate for water utilities.
Regulation 5	Regulation 5(a) is not appropriate for a legal monopoly such as the Water Sector.
PART 3 – COMPLAINTS	
Regulation 7	Regulation 7(1) should read "...shall develop, implement and maintain a Complaints handling procedure....".

	<p>Regulation 7(2). These terms do not seem suitable for the Water Sector. It is not clear what the words "not determined" are intended to convey or whether they are necessary in this context.</p> <p>Regulations 7(1)(b) requires provision of access to a telephone number through which Complaints can be made free of charge to the Consumer when using any local telephone network. We object to this on the basis that the number is likely to be subject to abuse and used for unrelated purposes at significant costs to CWC.</p>
Regulation 8	<p>Regulation 8(1)(c). Granting the Office the power to give directions to Sectoral Providers as it pleases is inequitable and heavy-handed.</p> <p>Regulation 8(4)(d). This should read "range of formats". However, it should, but does not, state what range of formats is required.</p>
Regulation 9	<p>Regulation 9(i) states that Sectoral Providers shall ensure that errors in a current Bill are corrected within two (2) Business Days and the changes shall be reflected in the next Bill. We object to the two (2) Business Day requirement as unduly onerous. In any event, the changes will be reflected in the next Bill.</p> <p>Regulation 9(l). CWC does not consider that this requirement makes sense. There must be another way to close a complaint for customers who unreasonably refuse to agree to closure.</p>
Regulation 11	<p>11(c) CWC does not consider that a Verbal Complaint should be required to be acknowledged in writing.</p> <p>11(f) states that a Sectoral Provider shall, within five (5) Business Days of a Complaint being closed, send a written confirmation of the resolution of the Complaint to the Consumer who made it. This seems to be excessive bureaucracy with little practical effect.</p>
Regulation 12	<p>Regulation 12(1)(a). This refers to the Office's Consumer Complaints Appeals Procedure Guidelines but these have not been provided for comment.</p> <p>Regulation 12(1)(b). This places an unfair burden on the Sectoral Provider to present the Complaint where the Consumer is not satisfied with the resolution offered by the Sectoral Provider. This is properly the Consumer's burden.</p>
Regulation 15	<p>15(2)(a). "An appropriate period of time" is highly subjective. We suggest a minimum period be given, for example 12 months.</p>
Regulation 16	<p>Regulation 16(1) states that, within fifteen (15) Days of the end of each Quarter a Sectoral Provider shall submit a report to the Office that sets out in respect of the previous Quarter -</p> <p>(a) the number of Complaints received;</p>

	<p>(b) the nature of each Complaint received; and</p> <p>(c) the current status of each Complaint received during the previous Quarter, i.e. whether the Complaint has been closed and if not whether a resolution has been proposed by the Sectoral Provider and/or accepted by the Consumer.</p> <p>CWC considers the request to send such a report to the Office every quarter is excessive bureaucracy.</p> <p>Regulation 16(3). CWC's contracts are in English and all of our communications are in English. If a Consumer can enter into our contracts in English, he should be able to complain in English. This places an unfair burden on the Sectoral Provider to obtain translations of Complaints written in a foreign language.</p>
PART 4 – CONTRACT TERMS	
Regulation 17(2)	<p>Regulation 17(2)(b), (c), (d), (e), (f), (g), (h), (k), (l) and (m). These provisions are not appropriate for Water Sector utilities.</p> <p>In particular, CWC does not consider provisions for the Sectoral Provider to be liable to compensate or refund sums to Consumer where the levels of service specified in the contract are not met to be appropriate to the Water Sector where charges are directly linked to usage.</p>
Regulation 17(3)	<p>This provision makes void any contractual provision limiting a Sectoral Provider's liability for damage caused to the Consumer's person or property. CWC vehemently objects to this provision and wishes to make it clear that a Water Utility can only be responsible for maintaining a proper network up until the customers' meters. CWC can never be made liable for problems caused by a broken pipe or fitting inside a person's property since it has no control on the quality of the piping and fittings installed by customers.</p>
Regulation 17(4)	<p>This makes any provision in the contract which purports to limit the obligations of the Sectoral Provider beyond Force Majeure void. CWC vehemently objects to this provision. It would be reasonable to include where there is any deficiency in CWC's source of supply of water due to any contingency affecting its machinery and works or due to any accidental or other interruption of its water supply as CWC's contracts currently provide. At the minimum, it should include other events or circumstances beyond the control of the Sectoral Provider.</p>
Regulation 18	<p>Regulation 18(1) and (2). A fixed term is impractical in the Water Sector where there is a legal monopoly. Contracts should continue until terminated in accordance with the terms and conditions of the contract. It would be unduly burdensome if CWC were obligated to keep renewing contracts every year.</p>

Regulation 19	These provisions are not appropriate for utilities in the Water Sector.
Regulation 20	These provisions are not appropriate for utilities in the Water Sector.
Regulation 21	These provisions are not appropriate for utilities in the Water Sector.
PART 5 – BILLING	
Regulation 24(1)(d)	“Before or at the same time that it issues the first Bill to a Consumer, a Sectoral Provider shall advise the Consumer in general terms of...whether or not the Sectoral Provider charges interest on late payments <u>(such interest to be reasonable)</u> ”. However, this does not state the standard by which reasonableness is to be determined. CWC considers its current contractual rate of 1½% per month, with monthly rests, reasonable, and is the rate negotiated with the Office in its draft Licence.
Regulation 25	Regulation 25(i) and (j). These provisions are not appropriate for utilities in the Water Sector.
Regulation 26	Regulation 26(b). CWC objects to this. It is not clear in how many forms it would need to make each bill and whether it would need to provide it to each customer in multiple forms. Regulation 26(e)(ii). “...or within such time period as the Office shall specify”. CWC considers this should be deleted as arbitrary. Bills are issued as soon as possible or the Sectoral Provider does not get paid. There is no need for the Office to specify a period of time especially without the need for proper investigation.
Regulation 28	This requires Sectoral Providers, when providing information about a bill via telephone, to provide access to the relevant telephone number free of charge from any local telephone network. CWC objects to this on the basis that this would be subject to abuse by Consumers for all sorts of purposes at significant cost to CWC.
Regulation 35	Regulation 35(3). Restriction of service is not a feasible or viable step in the Water Sector. A customer either has service or not. Also, what draft Regulation 35(4) calls suspension, is what CWC calls disconnection. CWC does not take any step that would permanently prevent the Consumer from accessing water. Water supply is simply disconnected and may be reconnected upon payment of the reconnection fee and any other outstanding bills. At the time of disconnection, CWC should be entitled to take legal action to recover the unpaid debt etc. Regulation 35(4) and (5) should be collapsed into one and called Disconnection.

	<p>Further, CWC notes that, in contrast to the draft licence that was negotiated with the Office where service could be disconnected after 4 weeks of non-payment of a bill from the due date, under draft Regulation 35 service may only be suspended after 45 days of non-payment after the due date. Up until Suspension the Consumer will still be adding to his liability by further usage in addition to the Bill for which service is being Suspended. This significantly increases the risk for CWC. In view of the fact that there is no viable Restriction stage CWC submits that the period after which CWC may terminate water supply should be 28 days after the due date of the respective bill as per the draft Licence.</p>
Regulation 37	<p>CWC notes that it would not be able to take any Credit Management Action, i.e., debt collection steps, where the sum is subject to an unresolved Complaint. However, a Complaint is not closed until the Consumer has agreed a proposed solution. It follows that Consumer could prevent any Credit Management Action being taken by simply submitting a Complaint and failing to agree a solution, which is obviously unacceptable. When the Complaint is escalated to the Office for investigation, the Office should have a timeframe defined within the Regulations to produce a resolution that is binding. If the resolution is not produced within that timeframe the Sectoral Provider should be able to take any Credit Management Actions it considers adequate for that particular situation. There should also be an option of referring the dispute to the courts in accordance with the draft licence negotiated between CWC and the Office.</p>
<p align="center">PART 6 – SERVICE PROVISION AND FAULT REPAIR</p>	
Regulation 38	<p>It appears Regulation 38(2) should be re-numbered Regulation 38(1)(b) and the subparagraphs should be (i) and (ii) respectively, and Regulation 38(3) should be renumbered Regulation 38(2).</p> <p>38(1)(a)(ii). As written, this suggests that the Office may act arbitrarily to give directions to the Sectoral Provider simply because a consumer has made a request. The language should be revised to provide that the Office must invite written submissions from both the complainant and the Sectoral Provider within twenty-one days of the complaint being received and within twenty-one days of receiving the submissions must notify the complainant and the Sectoral Provider of its decision in respect of the complaint which shall be final and binding on both parties. Clearly, it is in the interests of the Sectoral Provider to have new customers so it must have reasons not to have infrastructure in the relevant service area.</p>
Regulation 40	<p>It would be helpful to introduce as defined terms “Planned Interruption to Utility Service/Service” and “Unplanned Interruption to Utility Service/Service” so that different obligations and consequences flow from them. Planned Interruption to Utility Service would be an interruption that occurs where</p>

	<p>planned work undertaken results in a total loss of supply of a Utility Service to premises supplied under a Consumer contract. "Unplanned Interruption" would mean a total loss of supply of a Utility Service/Service to premises supplied under a Consumer contract that:</p> <ul style="list-style-type: none"> (a) is not deliberately initiated by the Sectoral Provider; or (b) is caused by Force Majeure; or (c) is necessary due to urgent circumstances in which it is necessary to protect: <ul style="list-style-type: none"> (i) the integrity of the Sector Provider's network; or (ii) the health or safety of people; or (iii) public or private property; or (iv) the environment. <p>40(1)(a). CWC considers seven (7) days' notice is excessive and proposes three (3) days' notice for a Planned Interruption instead.</p> <p>40(1)(d). CWC does not consider that compensation or other remedy should be available to Consumers as a result of the disruption and/or outage is appropriate in the Water Sector and requests that this be deleted.</p> <p>40(2). CWC considers this onerous. The Sectoral Provider will be using all efforts to restore the service. They should be allowed to use discretion whether notice is required to be given to customers as the service could possibly be restored before the notice is effected.</p>
Regulation 41	<p>41(4) states that all Consumer's Meters measuring services shall be checked for accuracy before installation and periodically thereafter on a scheduled or sample basis as determined by the Sectoral Provider. CWC considers that unduly burdensome and proposes that, for meters that meet or exceed the AWWA accuracy standards, the accuracy of the meters should only be checked when customers request it.</p> <p>41(8) states that if the Sectoral Provider is unable for any reason to gain access to read any meter, or for any other reason the Sectoral Provider is unable to obtain a Meter Reading, the consumption and demand shall be estimated by the Sectoral Provider, based on the average of the last three (3) readings. CWC uses a 12-month average, which it submits is more reasonable due to the seasonal nature of its business.</p> <p>41(9) requires that Sectoral Providers have the responsibility to alert consumers within one Billing Period, when consumption increases by at least fifty percent (50%). This is not appropriate for the Water Sector. Each Sectoral Provider has its particularities and what makes sense for CWC could be totally inadequate for CUC, for example. CWC immediately alerts Consumers if the consumption is 80% above the 12-month average. This is because there are</p>

	<p>several factors that affect consumption that may vary from month to month. For example, weather, people returning from overseas, tourists arrival numbers, etc..</p> <p>41(11)(a). The Sectoral Provider should have the option of either reimbursing the Consumer or apply excess to future bills.</p> <p>CWC objects to Regulation 41(11)(b) as it is a matter covered by its licence. CWC considers that, if corrected in the next billing cycle, it should be able to issue a bill for past charges in case meters are found in the field to be stopped based on their estimated consumption from the last known reading before the meter was found stopped. CWC's customers have never objected to this. CWC does not understand the final sentence of this paragraph. It seems incomplete.</p>
MISCELLANEOUS	
<p>"Consumers" is not consistently capitalized.</p> <p>There Is a typo in the spelling of "Preliminary" under Arrangement of Regulations.</p>	