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Department for Business, Enterprise and Regulatory Reform
Consultation on Good Guidance on Regulation

The Response of NJUG Ltd. (National Joint Utilities Group)[1]

Introduction

The National Joint Utilities Group (NJUG) represents utilities from the gas, electricity, water and telecommunications sectors in street works matters. NJUG and its member companies support the Government's aims of implementing traffic management policy and have been working closely with the Department for Transport (DfT) and other key stakeholders over the last three years on the implementation of the Traffic Management Act 2004. This is in addition to a range of existing legislation and regulation which impacts on utilities' ability to provide cost-effective, timely and secure essential services to our customers.

While not notified directly, NJUG welcomes the opportunity to comment on this consultation on 'Good Guidance on Regulation', and offer its viewpoint on a 'Code of Practice on Good Guidance on Regulation'. NJUG's members are greatly affected by regulation, commonly brought in by the Department for Transport. For example, the Permit regulations of the Traffic Management Act 2004, which allow Local Authorities the opportunity to introduce Permit schemes in an attempt to regulate road works, will greatly affect NJUG and its members. As the 1st April 2008 commencement date approaches, it becomes increasingly clear that the guidance offered on how to comply with these Permit regulations is insufficient since it does not appreciate the complexities and practicalities that surround the implementation of such regulations. This is an example that is likely to be drawn on throughout this consultation response.

NJUG would be eager to provide greater detail or attend face-to-face consultation meetings if desired. Our responses to the consultation's individual questions can be found below, broken down by each of the specified 'Golden Rules'.

[1] NJUG members Energy Networks Association, Water UK, National Grid, BT, Cable and Wireless, Virgin Media and THUS plc, and our associate members are Clancy Docwra, Skanska McNicholas, Balfour Beatty, Morrison, Morgan Est and NACAP. Including members through trade associations, NJUG represents thirty-nine utility companies.

1. Based on a good understanding of the audience

Good guidance requires a detailed understanding of the target audience. Different organisations may have different needs for guidance.

Q1: Should Golden Rule 1 be included in the Code of Practise in this form?

Yes.

How guidance should be offered will vary greatly from one audience to the next. NJUG believes that (where possible) all guidance should not only be addressed specifically for the relevant target audience so as to take into account all practical considerations but also for associated audiences. For example, for a highly technical audience such as NJUG, guidance will need to be tailored to a very specific level on how regulations should be complied with, considering all the practical complexities of the street works industry. Simultaneously the guidance should also consider that the target audience may well be interactive and homogeneous with one sector regularly interacting with other diverse sectors. An example being utilities, highway authorities, regulators and other government departments such as the Health and Safety Executive.

Of utmost importance is a consideration of the audience's perspective and how they will best interpret the guidance. This can best be achieved through constructive and overarching consultation and use of plain and simple language.

Q2: If not, what alternative would you like to see?

N/A

2. Designed with input from the audience and their representative bodies

Q3: Should Golden Rule 2 be included in the Code of Practise in this form?

Yes.

NJUG believes consultation is essential to the production of any guidance. To be effective, any Code of Practice needs input from industry and affected stakeholders, who can offer insightful and first hand expertise.

NJUG previously brought such views to the Government's attention in September 2007 when responding to the Cabinet Office's consultation on 'Effective Consultation'.

Wherever possible, consultation should include a face-to-face element bringing stakeholders together, rather than simply a call for written viewpoints. NJUG members, as members of HAUC(UK) (the Highway Authorities and Utilities Committee), have enjoyed successful working relationships with officials from the Department for Transport in the production of a number of industry Codes of Practices and feel the consultative and joint production of such documents is an effective means by which credible guidelines can be devised.

When input gathered through consultation is not incorporated into guidance, an explanation should be offered to help UK Plc understand the reasoning behind the Government's decision to exclude their suggestions.

Q4: If not, what alternative would you like to see?

N/A

3. Organised around the user's way of working rather than legislative or departmental structures

As far as possible, guidance should be structured around the user's processes to help them see how the regulation fits into their day-to-day work.

Q5: Should Golden Rule 3 be included in the Code of Practise in this form?

Yes.

Any guidelines should be framed from the perspective of the audience and their 'way of working' so as to make sure that guidelines offer a feasible method for complying with any regulatory framework.

As with Golden Rule 1, guidelines should be organised around the user's way of working mainly for technical and practical purposes, so that the guidance can be applied in the field and not just in theory.

Q6: If not, what alternative would you like to see?

N/A

4. Easy for users to understand

Guidance should be written in simple, clear, language without unnecessary jargon or acronyms. Guidance should be as concise as possible.

Q7: Should Golden Rule 4 be included in the Code of Practise in this form?

Yes.

Guidance must be easy to understand, so as to allow for ease of implementation but must not gloss over technical issues to simplify complex issues and if necessary include a comprehensive glossary of explanation.

If over-complicated in nature, stakeholders can find themselves seeking guidance on guidance itself. Finally, it should be possible (to an extent) for any audience to understand guidance, not solely those experienced in the given field.

Q8: If not, what alternative would you like to see?

N/A

5. Reliable

Businesses should know that the guidance will give them a good understanding of how to comply with the law. While many regulations have exceptions or complexities, it should be clear how to comply in most cases and simple checklists should be used wherever possible.

Q9: Should Golden Rule 5 be included in the Code of Practise in this form?

Clarity of guidance is essential so as to avoid mistakes and ensure successful compliance. Care must be taken not only to illustrate the major scenarios but also when minor affiliations may be relevant and of equal importance. Mistakes are often made unnecessarily due to confusion that can be avoided by simplifying guidance.

Obviously many regulations cannot be simplified. In such situations, contact details should be supplied of where further guidance can be acquired. Equally care must be taken to ensure there are no conflicts between Regulations, Codes of Practice and Guidance.

Q10: If not, what alternative would you like to see?

N/A

6. Issued in good time

To give organisations time to prepare for regulation, guidance should be issued at least twelve weeks before a regulation comes into effect. Sometimes more than 12 weeks will be needed, for example if a regulation is complex or costly to implement.

Q11: Should Golden Rule 6 be included in the Code of Practise in this form?

Yes. Guidance must be issued in time to assist with regulatory compliance.

In the case of big, complex and multi-structured organisations, coordinating compliance can take up a great deal of time and resources. Therefore, guidance should be issued as soon as possible to allow organisations enough time to comply within given timeframes.

The Traffic Management Act 2004 Permit regulations offer a good example of this issue. These regulations will be very costly to UK utilities (and therefore UK consumers and hence UK plc), and involve complicated alterations to operational structures. For instance, utilities require new computer systems to operate the permit schemes and extensive training of personnel and contractors. NJUG feels that guidance on how to comply with the regulations was not issued in time to allow for full testing of IT systems to guarantee compliance by the 1st April 2008 commencement date, because of delays (for whatever reasons) by the Department for Transport finalising documentation. The industry and its IT suppliers continue to work extremely hard to resolve problems and put in place costly contingency plans to seek to ensure they are able to comply on commencement date. However, if guidance had been issued sooner or the implementation of the regulations delayed, many of the problems encountered to date and many of the problems that are likely to arise before and after 1st April, could have been avoided.

Q12: If not, what alternative would you like to see?

N/A

7. Easy to access

Guidance should be easily available to the user. It will always be accessible through businesslink.gov.uk. Other forms of communication, including sending guidance directly to businesses or communicating through intermediaries, will also be used where they will be effective.

Q13: Should Golden Rule 7 be included in the Code of Practise in this form?

Yes.

Easy access to guidance is essential if it is to be effective. Direct contact with stakeholders, explaining that guidance has been released is always best where possible, to demonstrate the personal lengths Government is going to publicise the guidance.

Internet access is obviously necessary through businesslink.gov.uk, but it would also be beneficial to see all guidance available from the relevant departmental websites. However, to make this more accessible, NJUG would welcome the standardisation of all Government websites to improve one's ability to navigate around the sites effectively. NJUG has previously suggested this course of action through the Cabinet Office's consultation on 'Effective Consultation', to which NJUG responded in September 2007. Equally, Government should make every effort to identify and hold a list of stakeholders interested in specific areas, and ensure that they receive timely notification of all Government consultations.

Q14: If not, what alternative would you like to see?

N/A

8. Reviewed and improved

Guidance should be reviewed to check it is up-to-date and works for the user. The guidance will say when it is prepared and when it is due for review. It will be withdrawn when it no longer applies.

Q15: Should Golden Rule 8 be included in the Code of Practise in this form?

Yes.

Guidance must be reviewed on a regular and routine basis, to ensure it is as up to date as possible and in line with all new regulatory developments. NJUG would suggest that a specific standard timeframe for reviewing guidance be established when regulations are devised so as to make sure they are as up to date as possible. Equally in line with better regulation principles, once guidance is no longer relevant it should be withdrawn, and its withdrawal widely publicised and circulated to interested stakeholders.

Q16: If not, what alternative would you like to see?

N/A

Q17: Other than the Golden Rules outlined in this document, are there any other principles of good guidance that should be included in the Code of Practice?

No. NJUG believes that the guiding principles set out within this consultation should be used as the basis for all regulatory guidance and has no further suggestions to make other than those included above.