




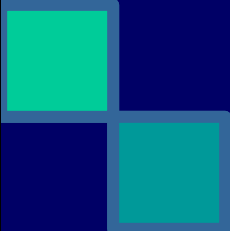

*"THE CHALLENGES OF REGULATING A
STATE UTILITY FROM A LEGAL
PERSPECTIVE"*

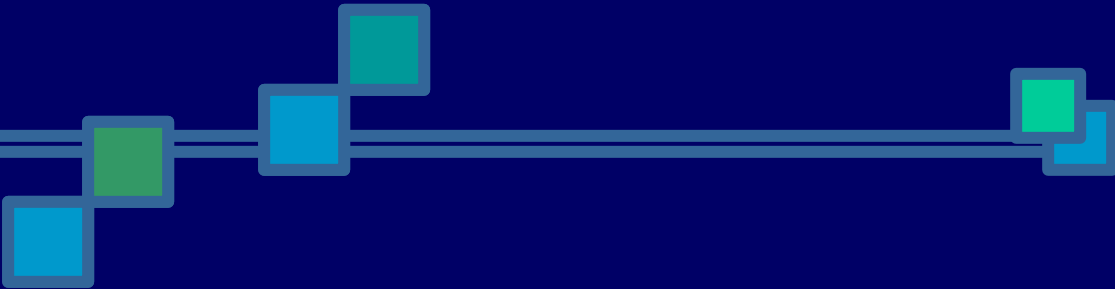




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INTRODUCTION

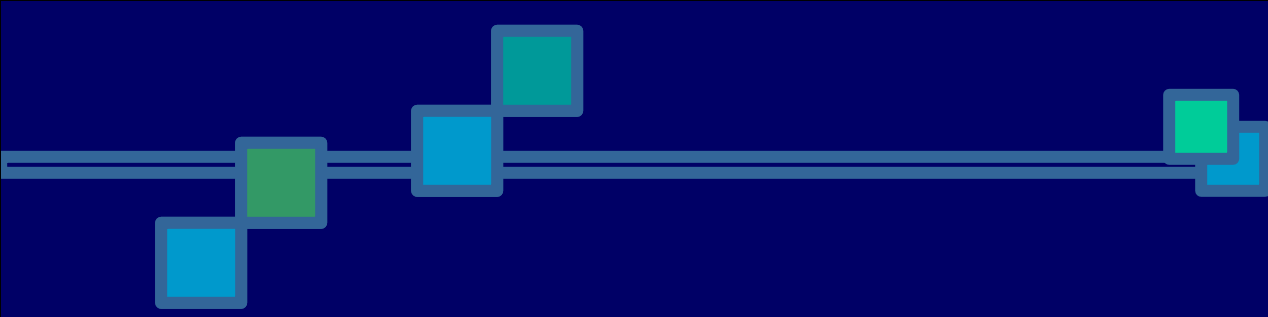
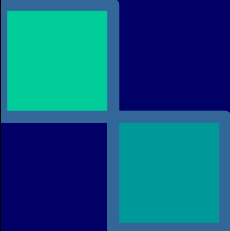

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- Utilities were historically provided by the State for the public good;
 - Regulatory regimes were established to supervise:
 - restructuring
 - pricing reforms
 - consumer protection
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- Demonopolisation & Privatization were envisioned to:
 - promote increased efficiency of supply
 - lower rates
 - provide higher levels of services to customers
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LEGAL STRUCTURE OF A STATE UTILITY

- Established by an Act of Parliament;
 - Empowered with wide ranging responsibilities:
 - Development
 - Provision & control of water supply & sewerage facilities & matters of sanitation
 - Promotion of conservation & proper use of water resources.
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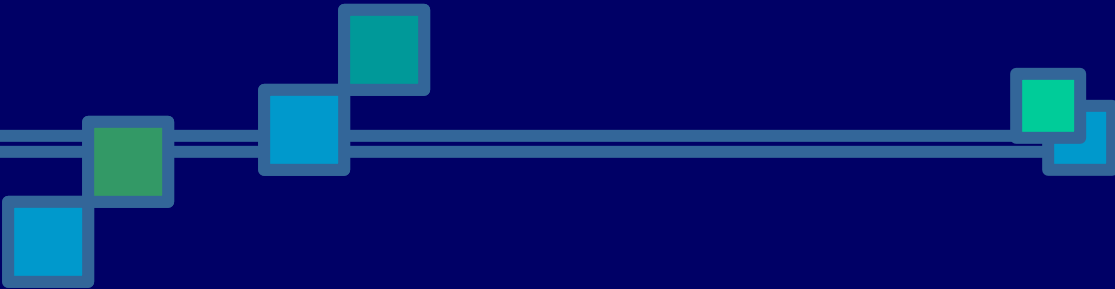
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- The Legal Structure for a State or Public Utility provided the mechanism for distribution & control of the relevant service by the State.

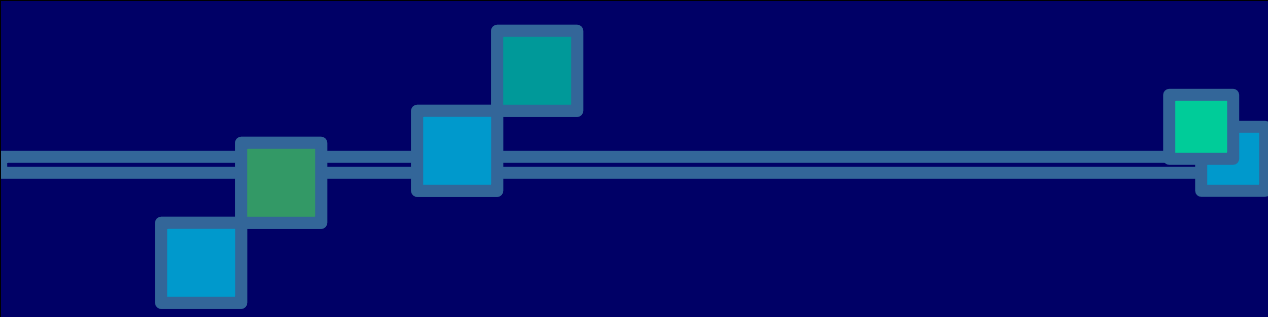



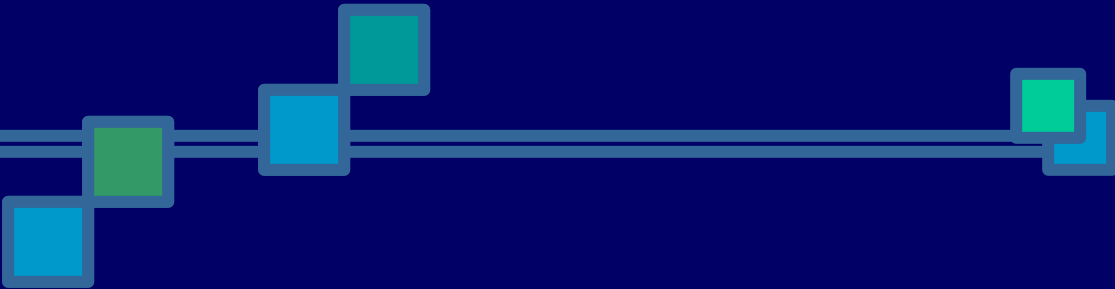

THE LEGAL FRAMEWORK OF REGULATION

- Utilities formerly subject to State control;
- The regulatory function of the State was divested through the withdrawal of direct government involvement:
 - privatization
 - semi-privatization

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- The Caribbean framework for regulation is based on the UK model for multisector regulation;
 - The Regulator (in our jurisdiction - The Regulated Industries Commission) was established by an Act of Parliament;
 - The Act details the functions/objectives of the Minister & the Regulator;
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- The Minister & the Regulator are charged with the responsibility of protecting the interests of consumers with respect to:
 - Prices
 - Continuity & quality of services
 - The Regulator is required to issue a licence authorising companies to operate in the relevant service industry;
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- The ability of the Regulator to control the relevant industry lies within the terms & conditions of the licence;
 - The licence seeks to set out the ambit of conduct of the utility;
 - The licence protects the utility from arbitrary behaviour by the Regulator.
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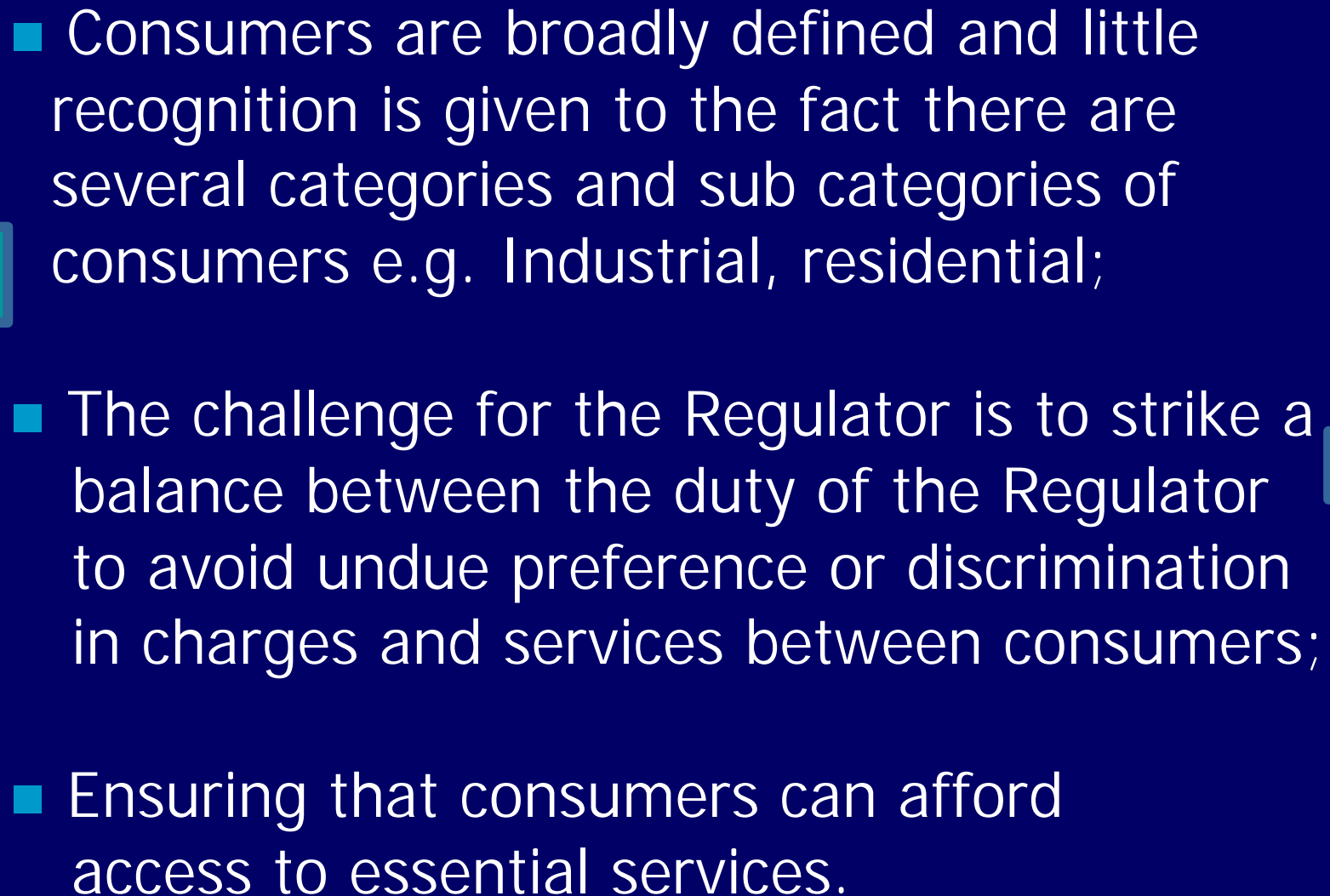
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- The challenge is for the Regulator to;
 - ensure that any action must be directed towards securing the public interest;
 - without overly restricting the activity and viability of the utility;
 - The challenge is to ensure that the terms and conditions of the licence are drafted and crafted in manner and form so as to ensure that the stated objectives of the Regulator can be achieved.
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LEGAL POSITION OF CONSUMERS

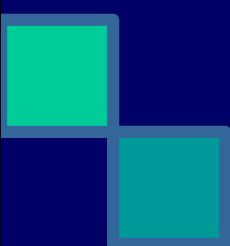

- The withdrawal of State ownership from Utilities appears to have strengthened the position of the consumer.
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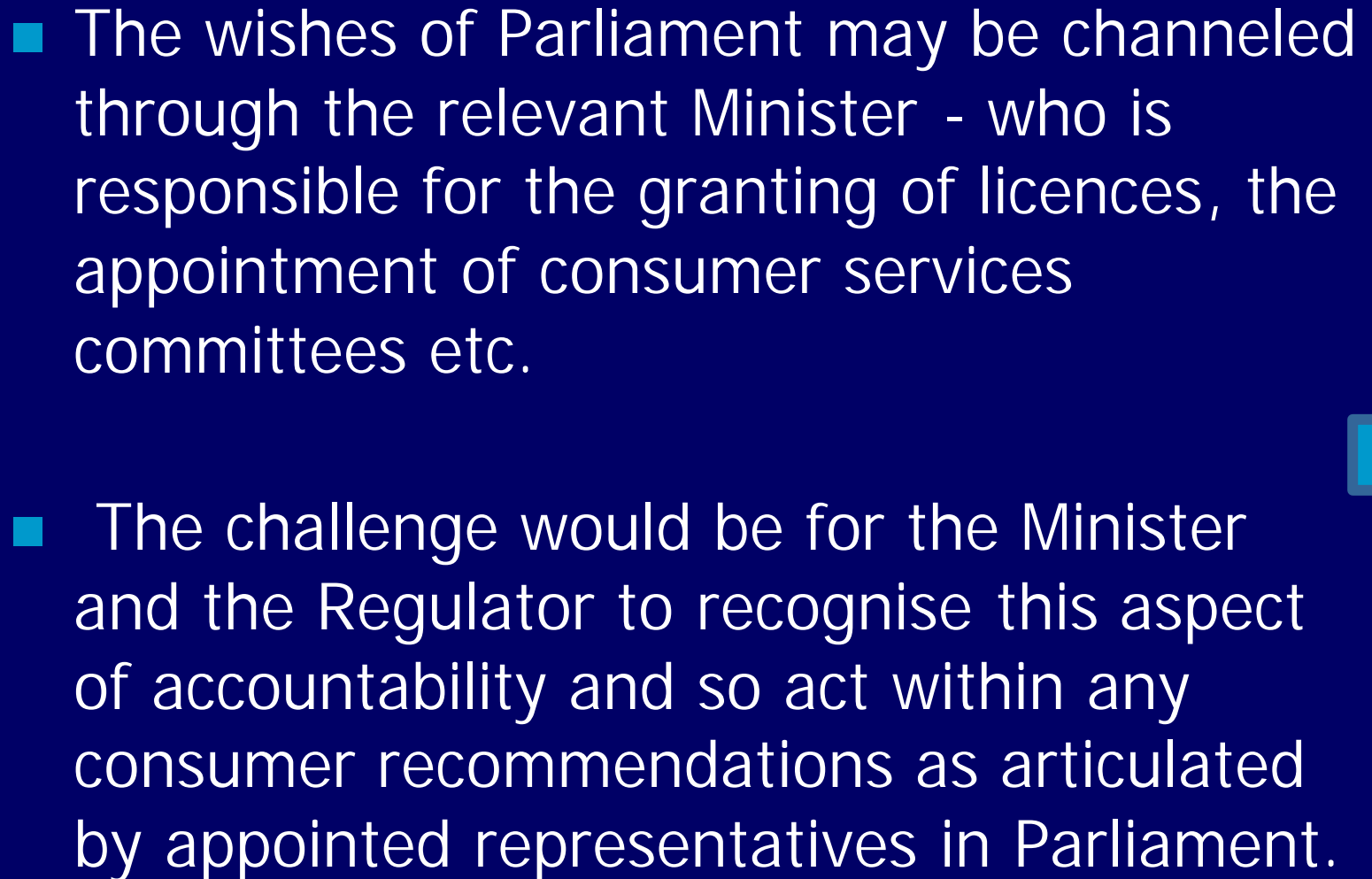
“ ...The best way to please the Regulator is to please the customers...”

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- Consumers are broadly defined and little recognition is given to the fact there are several categories and sub categories of consumers e.g. Industrial, residential;
 - The challenge for the Regulator is to strike a balance between the duty of the Regulator to avoid undue preference or discrimination in charges and services between consumers;
 - Ensuring that consumers can afford access to essential services.



JURISDICTION OF PARLIAMENT

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- Parliament is the ultimate forum for challenging, influencing and controlling the Regulator and by extension the utility;
 - Parliament has no powers over the appointment of the Regulator or its Commissioners, however annual budgets etc. must be laid before Parliament;
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- The wishes of Parliament may be channeled through the relevant Minister - who is responsible for the granting of licences, the appointment of consumer services committees etc.
 - The challenge would be for the Minister and the Regulator to recognise this aspect of accountability and so act within any consumer recommendations as articulated by appointed representatives in Parliament.

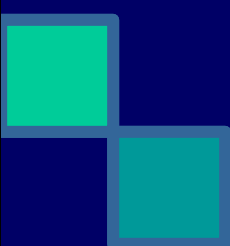



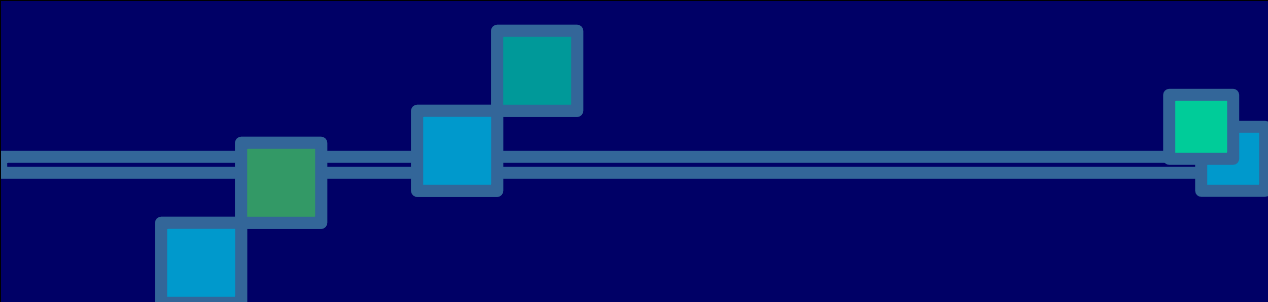

JURISDICTION OF THE COURT

- An aggrieved party may appeal to a Fair Trading Tribunal;
- Redress can also be sought via the High Court via an application for Judicial Review;
- The challenge for the Regulator is to avoid Judicial Review of a decision by adhering to transparent, auditable & proper procedures- the adoption of Best Practice Procedures.




THE REGULATOR'S FORUM

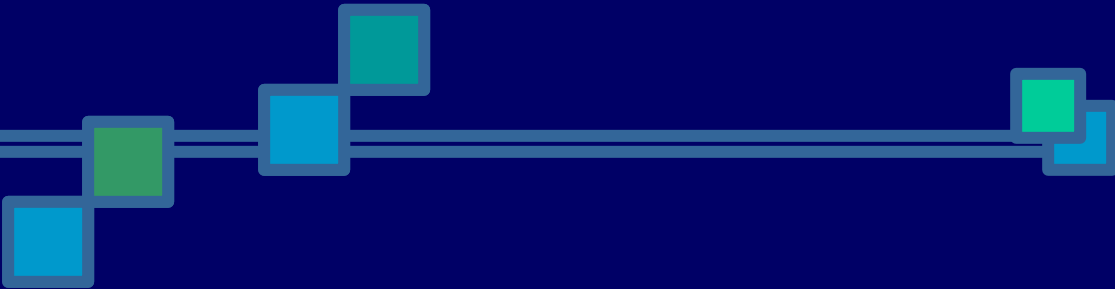
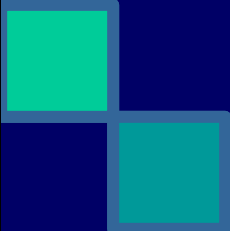

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- Previously, the Regulator functioned as a quasi-judicial body with regard to the setting of rates;
 - In this open process, there was freedom of debate with a Tribunal deciding on the outcome;
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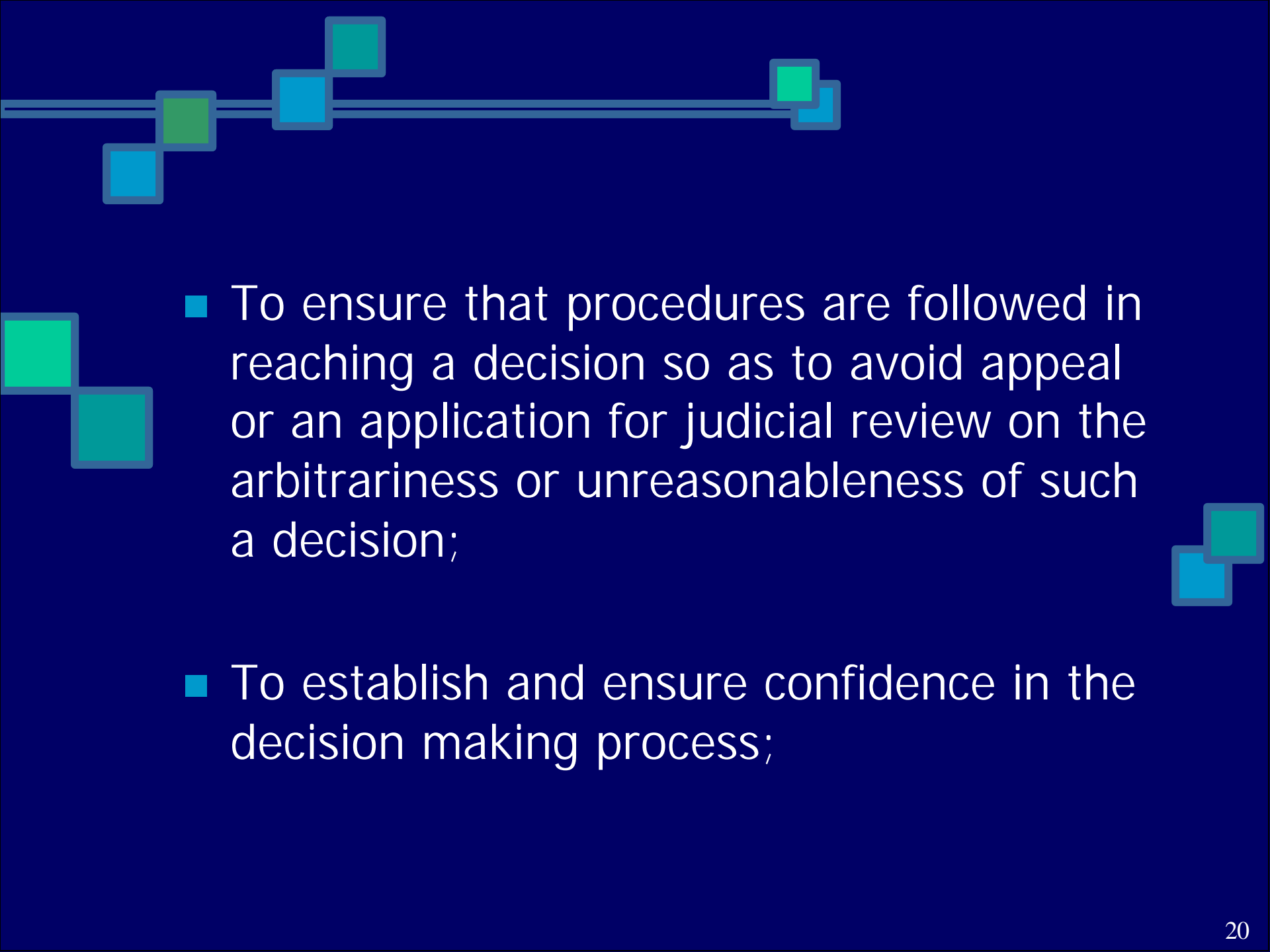
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- The forum now - applications are submitted in the privacy of the Regulator's Committee rooms with objections or otherwise also being heard in private;
 - The openness of the quasi-judicial process and freedom of debate will be lost;
 - The challenge for the Regulator will be to establish confidence in this new forum.
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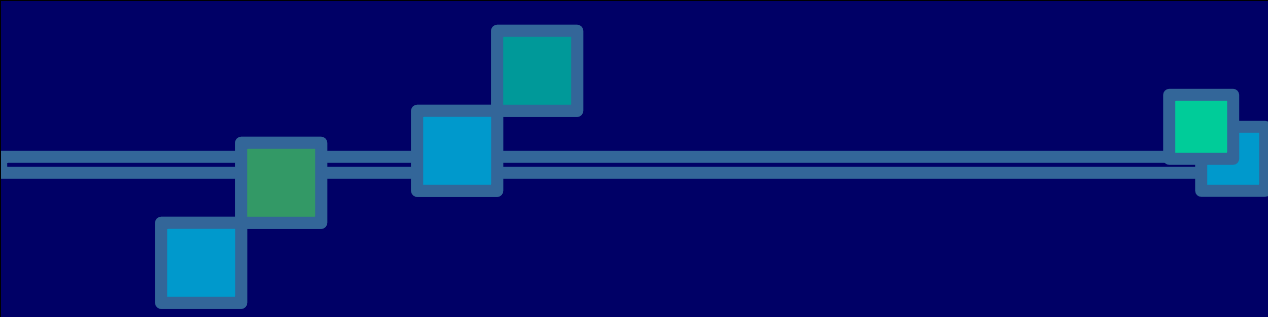



THE CHALLENGES

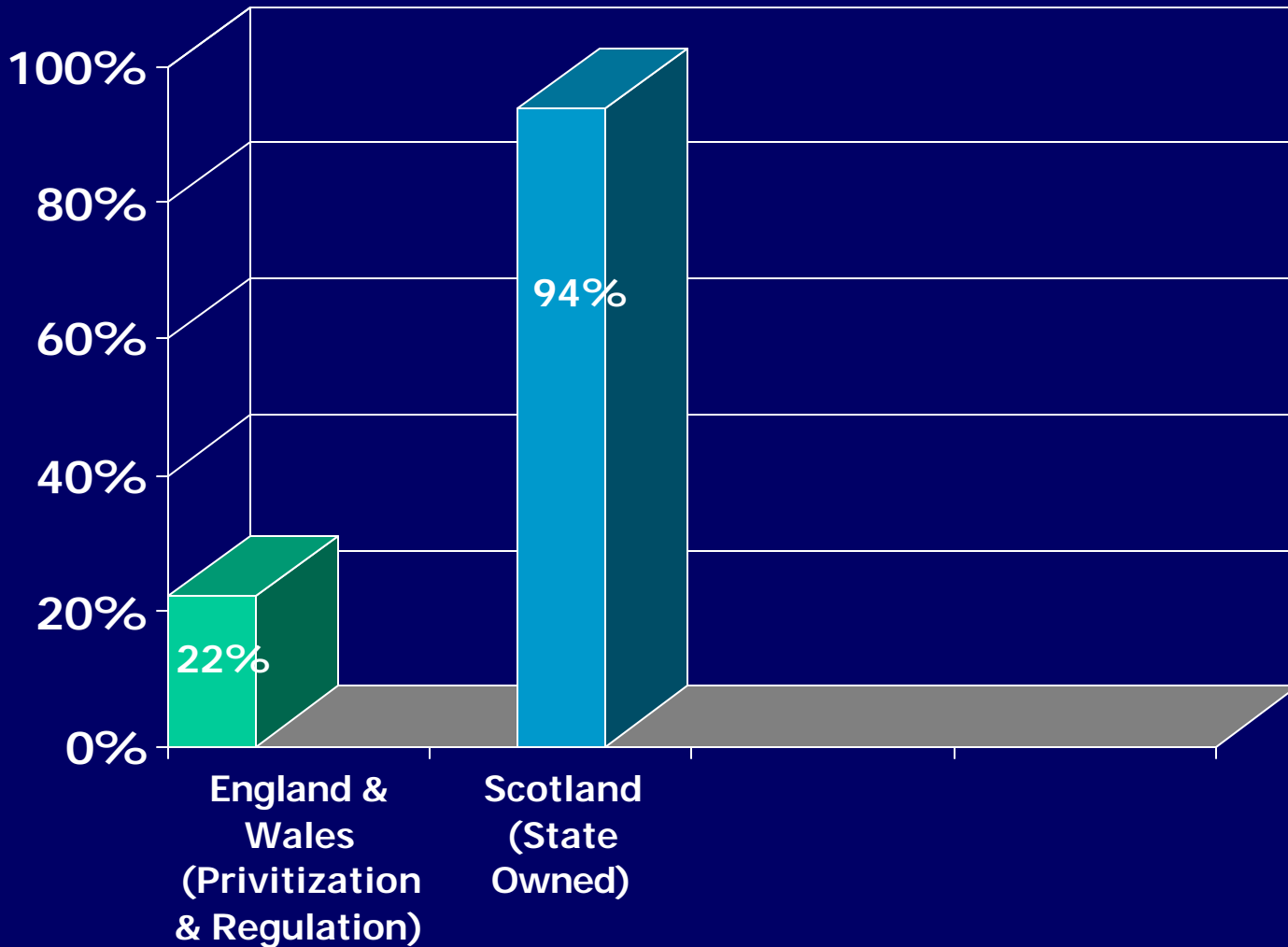
- Purposeful & objective interpretation of the responsibility of the Regulator;
 - To ensure that the terms & conditions of Licences are:
 - in terms of drafting language & content, clear & precise;
 - objective and not subjective to the Regulator;
 - representative of the consultation with all stakeholders.
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- To avoid undue preference & discrimination in charges as between different categories of consumers;
 - To demonstrate, accountability by the way of a reporting relationship to the Parliament and ultimately his stakeholders;
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- To ensure that procedures are followed in reaching a decision so as to avoid appeal or an application for judicial review on the arbitrariness or unreasonableness of such a decision;
 - To establish and ensure confidence in the decision making process;

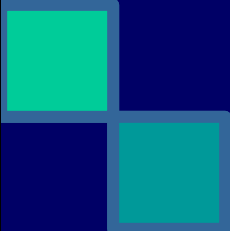
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- To strike a balance in its regulation so as to ensure that incentives and motivation are provided to the Utilities to provide a quality and cost effective service to consumers.
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COMPARATIVE RATE INCREASES SINCE 1989: England, Wales & Scotland





LOOKING FORWARD

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- The Challenge is for the Regulator acting within the legal framework to balance the competing issues of consumer interests and financial viability of the utility.
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