

**DRAFT COMPETITION REGULATORY AUTHORITY (JERSEY) LAW 200- (P.191/2000): SECOND
AMENDMENTS**

**Lodged au Greffe on 14th November 2000
by Deputy J.L. Dorey of St. Helier**



STATES OF JERSEY

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(i) PAGE 14, ARTICLE 6 -

For paragraph (5) substitute the following paragraph:

“(5) The Authority shall have such powers as are reasonably necessary for the carrying out of its functions or incidental to their proper discharge.”.

(ii) PAGES 14 AND 15, ARTICLE 7 -

Delete the Article.

(iii) PAGE 16, ARTICLE 10 -

(a) *in paragraph (2), for the words “such of the Authority’s functions as are conferred on it by or under any Law other than this Law.” substitute the words “the Authority’s licensing or regulatory functions or its functions under Article 6(2) or (4).”;*

(b) *in paragraph (4), delete the words “in the performance of its functions”.*

(iv) PAGE 18, ARTICLE 13 -

(a) *in paragraph (3), for the words “Finance and Economics Committee” substitute the word “States”;*

(b) *in paragraph (3), after the word “Authority” insert the words “and the Finance and Economics Committee”;*

(c) *delete paragraph (4).*

(v) PAGE 19, ARTICLE 15 -

Delete the Article.

(vi) PAGE 21, ARTICLE 19 -

In Article 19(2)(c) delete the words “the Authority,” where firstly occurring.

(vii) PAGES 21 AND 22, ARTICLE 20 -

For Article 20 substitute the following Article -

“ARTICLE 20

Regulations

(1) The States may by Regulations make provision for the purpose of carrying this Law into effect.

(2) Regulations made under this Law may -

(a) make different provision in relation to different cases or circumstances; and

(b) contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.”.

(viii) CONSEQUENTIAL RENUMBERING

ReNUMBER the provisions of the Draft Law accordingly.

DEPUTY J.L. DOREY OF ST. HELIER

REPORT

Introduction

It must be said that it has not been easy to produce the amendments in the very limited time allowed by the Committee's determination to have this matter debated within the absolute minimum time decreed by Standing Orders. In that sense, this Law seem to typify an alarming, and increasing, tendency for some major Committees of the States to bulldoze their propositions through at the last minute, and for the most important matters to be debated with the least notice. Such a practice is not in the interests of good government, and amounts to contempt for the democratic process and for individual States' Members, whose duty it is to examine all propositions with the greatest care.

It seems to me self-evident that the establishment by the States of a new organisation - funded by government but not part of government - should strike the proper balance between independence and accountability. The amendments have been brought, in the main, because that proper balance does not appear to have been struck in the draft Law.

I wholly support the concept of a Jersey Competition Regulatory Authority (JCRA). The States have also made it clear that they wholly support the concept. Such support does not justify the unseemly - and risky - haste with which P.191/2000 is being promoted. It is essential, when we are doing something new, that we should strive to get it right from the outset.

At the same time, it is inevitable that experience will dictate some changes to the initial model. As the Report says, on page 5, "Given the evolution that is likely to take place as the competition policy debate evolves, it is not unlikely that the constitution and structure of the JCRA as set out in this draft Law may need to be adjusted at a later stage."

During that evolution, it is essential that the JCRA's operational independence, and its lines of accountability, should be perfectly clear, and that decisions relating to the JCRA should be made, as far as possible, in the arena of open States debate.

Amendment (i): Article 6

Article 6(1) states that "The Authority shall have such functions as are conferred on it by or under this or any other Law or any other enactment", and the word "functions" is specifically defined in Article 1 to include "power, authority and duty".

Article 2(2) also gives the Authority "as far as is possible for a body corporate...the rights, powers and privileges...of a natural person".

Under these circumstances, Article 6(5) is drawn far too widely, effectively leaving the Authority free to do *anything* it could defend as being remotely connected with its legal duties and powers.

The amendment therefore seeks to replace the wording of Article 6(5) with more restrained, and more inherently *reasonable*, wording taken from the equivalent provision of the Financial Services Commission (Jersey) Law 1998.

It may well be that the Authority will develop over time, and will be given wider powers and duties. But it is essential, with a totally new organisation such as this, that we should begin with a shared understanding of the extent of its functions.

Amendment (ii): Article 7

It is intended that the Authority should be independent of government. At the same time, however, the intention is that it should receive funding from the taxpayer - which presupposes a requirement for accountability.

The draft Law is already inadequate in terms of the Authority's own accountability. Article 7, in allowing the Authority to create committees outside its own membership, which committees can set up sub-committees, stretches the already frail thread of accountability two stages too far.

Amendment (iii): Article 10

There is no explanation in the Committee's Report, of the rather strange wording employed in Article 10(2). The draft text essentially says that the Industries Committee may not interfere with the Authority's actions, *when those actions relate to powers conferred by Laws other than the present Law*.

Interference by the Industries Committee would therefore be allowable, if it related to functions of the Authority under this Law.

The amendment is designed to make it absolutely clear that the Industries Committee may not interfere with the Authority's performance of its licensing, regulatory and information-gathering functions.

The amendment to Article 10(4) is essentially a consequential amendment arising out of the previous one. Since it has now been made clear exactly what constitutes *legitimate* guidance and directions from the Committee to the Authority, the words "in the performance of its functions" become superfluous.

Amendment (iv): Article 13

In view of the fact that the Authority is a brand new organisation, it is appropriate that the level of its annual funding should be decided by the States as a whole, on the recommendation of the Industries Committee, after due consultation with the Authority and the Finance and Economics Committee. Accountability demands no less.

Amendment (v): Article 15

The provisions of Article 10, and in particular Article 10(3) and (4), make this Article redundant. The Authority is already bound to comply with guidance and directions from the Committee in terms of investing its funds.

Amendment (vi): Article 19

Article 19 seems symbolic of the Committee's lack of clarity of thought, on the crucial question of the Authority's independence and accountability.

Article 2 sets the Authority up as a body corporate, which may be sued in its own name. Article 19 then affords the Authority a degree of immunity from legal action, as if it were a quasi-governmental organisation.

It is only reasonable that the individual members of the Authority should be given a measure of protection, and that the Industries Committee and the States should be protected in terms of the guidelines they issue and the appointments they make. Such protection should not, however, be extended to the Authority *as a body*.

Amendment (vii): Article 20

It cannot be stressed too often that the JCRA is a completely new body - a radical new departure in the Jersey context. In future years, it may well be the case that aspects of the Authority's work can be guided - insofar as guidance is required - by way of Committee Orders. Initially, however, it seems greatly preferable that the use of Regulations should allow the States to consider these things in formal debate, at least until the Authority is "bedded in".