

DRAFT COMPETITION REGULATORY AUTHORITY (JERSEY) LAW 200-

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by the Industries Committee**



STATES OF JERSEY

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REPORT

1. In July the States agreed a revised approach to the incorporation of Jersey Post and Jersey Telecoms. This involved the creation of a new, independent regulatory body to license the new companies. This new body would have a primary duty to secure provision in the Island of the licensed services, in this case postal and telecommunications services. Subject to this primary duty, the new body would have to act in a manner best calculated to further the interests of customers of the operators of those services, wherever possible by promoting competition between service providers.
2. In September, when the States considered an anti-inflation strategy for the Island, it agreed to charge the Industries Committee to bring forward specific draft legislation in order to institute competition policy in the Island. It was envisaged that the body to be established for the initial purpose of regulating the postal and telecommunications sectors would, once it had established its credentials in those areas, be able to develop into the more fully-fledged competition authority, with powers to act in respect of both public and private sectors, that would be needed to begin to give effect to a new competition policy regime.
3. The States have also agreed, in this year's Resource Plan, a 2001 law drafting slot for the Industries Committee to prepare a law to extend independent regulation to other public utilities in the Island. The Committee expects to address this first in respect of the energy sector, including the Jersey Electricity Company. This will be a further role for the new body.
4. The purpose of this draft Law is to establish the body in question, to be known as the Jersey Competition Regulatory Authority (JCRA). The Law constitutes the JCRA as a corporate body and sets out the basic structures within which it must work, including corporate governance arrangements. It also, in Article 6(4), enables the JCRA on request, to provide the Industries Committee with reports, advice and assistance in relation to competition matters, monopolies, utilities and similar matters. The aim of this particular article is to enable an iterative policy-making process to begin between the Committee and the JCRA in order to develop the wider competition policy brief now agreed by the States.
5. Following the States decision in July, the Industries Committee took over responsibility for the preparation of new Laws to replace the Post Office (Jersey) Law 1969 and the Telecommunications (Jersey) Law 1972 and achieve the transfer of both existing businesses - Jersey Post and Jersey Telecoms - into new Jersey-incorporated companies wholly owned by the States. A good deal of work on these new Laws had already been done by the Telecommunications Board and the Committee for Postal Administration, and the Committee's task has been to re-shape them in line with the agreed revised approach to incorporation and the licensing of services. Under the new Laws, the telecommunications and postal sectors will be regulated by the JCRA. It will license the two States-owned companies and may well license other competing or complementary private sector businesses within those sectors. The two Laws will set out the functions, powers and duties of the JCRA in relation to all this. This present draft Law is not concerned with these particular licensing and regulatory functions. Its purpose is simply to establish the JCRA as a corporate entity so that it is in place and able to begin its work ahead of the remainder of the reforms, notably the incorporation of Jersey Post and Jersey Telecoms, coming into force.
6. The attention of States members is drawn to the Explanatory Note, prepared by the Law Draftsman's Office, which accompanies the draft Law. A number of matters deserve particular mention -
 - First, it is deliberately intended that the JCRA is, and is seen to be, independent from the States in its licensing and regulatory roles. It is intrinsically important that these functions are undertaken independently but subject to clear statutory duties relating to securing service provision and protecting and promoting customers' interests in the face of monopoly or dominant providers of essential services; this is the model for utilities regulation that has now been established across the European Union, and beyond. It would be particularly undesirable for any Committee of the States to be involved in this work -
 - (a) because in certain key cases the States may or will have a direct shareholder relationship with regulated firms;
 - (b) because regulation may, in meeting the reasonable expectations of users and consumers, run counter to the interests - perceived or otherwise - of the States in its capacity as owner; and
 - (c) because of the need for apolitical, expert and dispassionate regulatory decision-making within the legal and policy parameters set.

The independence of the JCRA is therefore clearly stated in Article 2(4). However, the draft Law does contain a number of provisions which allow for the involvement of the Industries Committee and the Finance and Economics Committee in matters concerning the way the JCRA conducts its business as a public body; these provisions do not extend in any way to its regulatory and licensing functions and, on corporate governance issues, may only be exercised by the Industries Committee after consultation with the JCRA.

- Secondly, the draft Law provides for the Industries Committee to have sponsorship responsibility for the JCRA. The role of the Committee in this respect is set out in a number of Articles -
 - ◆ appointment and removal of members, including their terms and conditions, and notification of appointments to the States (Articles 3, 4 and 5);
 - ◆ the giving of guidance and directions to the JCRA on corporate governance matters (Article 10);
 - ◆ receiving and laying before the States the JCRA's annual accounts (Article 17) and annual report (Article 18).
- Thirdly, the draft Law, in Article 6(1), enables the States to give new functions to the JCRA through other Laws. The functions relating to the postal services and telecommunications sectors will be the first to be conferred. Others, both specific to other utility sectors and in support of competition policy generally are expected to follow, as indicated above. 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.

Financial and manpower implications

7. The JCRA will be an independent entity, and such staff as it may need to employ, together with its members themselves, will not count against civil service numbers. The Committee will, in due course, consider the JCRA's requirements under the Regulation of Undertakings Law. Competition and regulatory policy is a new and important area of endeavour for the Island, as the States have already noted when considering the anti-inflation strategy and making it work. These will, however, be small, relative to the prize of a well-functioning, more efficient economy in the Island that the States has confidently indicated should be available once an effective competition policy regime is in place. As for financial implications, the aim is that the JCRA should move towards being self-financed through licence fees. But there will be start-up costs, and self-sufficiency may take a little while to achieve during its initial growth period. There is accordingly provision in the draft Law for the JCRA to receive taxpayers' funds. The Committee's indicative estimate of costs for 2001, including recruitment costs, is approximately £200,000.

Note: The Human Resources Committee commented as follows -

As it is proposed that the Competition Regulatory Authority will be established as a corporate body, and not as a States of Jersey department, it will not be subject to the manpower policies of the Human Resources Committee.

Explanatory Note

The purpose of this draft Law is to establish the Jersey Competition Regulatory Authority and make provision for its membership and functions.

Article 1 sets out a number of definitions used in the draft Law and explains the use of cross-references.

Article 2 establishes the Authority as a body corporate and makes it clear that it is independent of the States and the Industries Committee.

Articles 3 and 4 provide for the appointment of three or more members for terms of up to five years, subject to provisions on vacation of office. *Article 5* requires the Authority to pay the members in accordance with directions of the Industries Committee.

Article 6 lists the functions (including the powers, authorities and duties) of the Authority. At the top of the list are the key functions of the Authority, which are to be conferred under other Laws. The Article goes on to confer functions concerning advisory bodies and the preparation of reports at the request of the Industries Committee on matters concerning competition, monopolies, utilities and provision of certain goods and services.

There may be committees, and sub-committees, of the Authority (and these are not restricted in their membership to members or officers of the Authority): *Article 7*. The Authority may employ staff (*Article 8*) and delegate its functions (*Article 9*).

The Authority is subject to general guidance and directions from the Industries Committee under *Article 10* on matters of corporate governance, but not on the exercise of its key functions.

Article 11 makes it clear that the revenue of the Authority is not required to be paid to the Treasurer of the States under Article 8 of the Public Finances (Administration) (Jersey) Law 1967.

Article 12 sets out the various contexts in which the Authority may charge fees.

The States may make grants to the Authority (*Article 13*). The Authority must obtain the consent of the Industries Committee if it wishes to borrow (*Article 14*), and the Finance and Economics Committee may guarantee liabilities of the Authority or lend money to it (also *Article 14*). The Authority must adhere to the Industries Committee's guidelines if it wishes to invest its funds (*Article 15*). The income of the Authority is exempt from income tax (*Article 16*).

The Authority must maintain accounts and have them audited (*Article 17*) and must provide an annual report (*Article 18*).

Article 19 limits the liability of the States, the Authority, the Industries Committee, and the members, staff and agents of the Authority and the Committee, as regards the functions of the Authority.

Article 20 enables Orders to be made in aid of the draft Law.

Article 21 sets out the short title of the draft Law and provides for its commencement on a day or days to be appointed by the States.

COMPETITION REGULATORY AUTHORITY (JERSEY) LAW 200-

ARRANGEMENT OF ARTICLES

Article

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COMPETITION REGULATORY AUTHORITY (JERSEY) LAW 200-

A LAW to constitute a body corporate to be known as the Jersey Competition Regulatory Authority and for matters ancillary thereto, sanctioned by Order of Her Majesty in Council of the

(*Registered on the* *day of* 200-)

STATES OF JERSEY

The day of 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“the Authority” means the Jersey Competition Regulatory Authority established by Article 2;

“the Committee” means the Industries Committee;

“financial year” means financial year of the Authority, being the period beginning with the day on which Article 2 comes into force and ending with the thirty-first day of December in the following year, and each subsequent period of twelve months ending with the thirty-first day of December in each year;

“function” includes power, authority and duty;

“member” means member of the Authority.

(2) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.

(3) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(4) A reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

ARTICLE 2

Establishment of Authority

(1) The Jersey Competition Regulatory Authority is established.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may -

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of any property; and

- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Authority shall be authenticated by the signature of a person authorized by the Authority to sign on its behalf and every document bearing the imprint of the seal of the Authority shall be deemed to be properly sealed unless the contrary is proved.

(4) Save as this Law provides to the contrary, the Authority shall be independent of the Committee and of the States and neither the Committee nor the States shall be liable for any act or omission or debt or other obligation of the Authority.

- (5) The Authority may regulate its own proceedings.

ARTICLE 3

Appointment of members

- (1) The Authority shall consist of -
 - (a) one member appointed by the Committee as Chairman of the Authority; and
 - (b) two or more other members appointed by the Committee after it has consulted the member that it has appointed as Chairman.
- (2) A person is not disqualified from holding office as a member because he is an officer, employee or agent of the Authority.
- (3) The Committee shall notify the States of the appointments.
- (4) The rights and obligations of the Authority, and the performance of its functions, shall not be affected by any vacancy in its membership or any defect in the appointment of a member.

ARTICLE 4

Terms of appointment of members

- (1) A member shall hold and vacate office in accordance with the terms of his appointment.
- (2) A member shall be appointed by instrument in writing for a period not exceeding five years and upon expiry of such period shall be eligible for reappointment.
- (3) A member may at any time resign his office by giving notice in accordance with the terms of his appointment.
- (4) The Committee may revoke the appointment of a member if the Committee is satisfied that the member -
 - (a) has been absent from meetings of the Authority for a period longer than six consecutive months without the permission of the Authority;
 - (b) has neglected the duties of a member or has engaged in misconduct;
 - (c) is an undischarged bankrupt; or
 - (d) is incapacitated by physical or mental illness.

ARTICLE 5

Remuneration of members

- (1) The Authority shall pay to the members -

- (a) such remuneration as the Committee determines; and
- (b) if the Committee so determines, reasonable out-of-pocket or other expenses occasioned in the course of carrying out their duties.

(2) The Authority shall also make for the members (or persons who have been members) such provision (if any) for pensions, allowances or gratuities, and payments when special circumstances arise, as the Committee directs.

ARTICLE 6

Functions

(1) The Authority shall have such functions as are conferred on it by or under this or any other Law or any other enactment.

(2) The Authority may recognize or establish, or assist or encourage the establishment of, bodies that have expertise in, or represent persons having interests in, any matter concerning competition, monopolies, utilities or any matter connected with the provision of goods or services to which the Authority's functions relate.

(3) The functions of those bodies shall include one or more of the following -

- (a) the provision to the Authority of advice, information and proposals in relation to any one or more of those matters;
- (b) the representation of the views of any one or more of those persons.

(4) The Authority may, on request by the Committee, provide the Committee with reports, advice, assistance and information in relation to any matter referred to in paragraph (2).

(5) The Authority shall have power to do anything that is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions.

ARTICLE 7

Committees

(1) The Authority may establish committees whose members may, but need not, be members, officers, employees, or agents, of the Authority.

(2) A committee of the Authority may itself establish sub-committees whose members may, but need not, be members of the committee or members, officers, employees, or agents, of the Authority.

ARTICLE 8

Staff

(1) The Authority may appoint such officers, employees and agents as it considers necessary for the performance of its functions.

(2) The Authority may -

- (a) make those appointments on such terms as to remuneration, the payment of expenses, and other conditions of service, as it thinks fit; and
- (b) establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

ARTICLE 9

Delegation

- (1) The Authority may delegate any of its functions under this or any other enactment wholly or partly to -
 - (a) the Chairman;
 - (b) another member;
 - (c) an officer or employee of the Authority; or
 - (d) a committee whose member or members are drawn only from the members, officers and employees of the Authority.
- (2) Nothing in this Article shall authorize the Authority to delegate -
 - (a) this power of delegation; or
 - (b) the function of reviewing any of its decisions.
- (3) The delegation of any functions under this Article -
 - (a) shall not prevent the performance of those functions by the Authority itself; and
 - (b) may be amended or revoked by the Authority.

ARTICLE 10

Committee may guide or direct Authority in certain matters

- (1) The Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written guidance, or general written directions, on matters relating to corporate governance, that is, relating to the system and arrangements by and under which the Authority is directed and controlled.
- (2) Those matters may include matters relating to accountability, efficiency, and economy of operation, of the Authority, but not matters relating directly to the performance of such of the Authority's functions as are conferred on it by or under any Law other than this Law.
- (3) In particular, but without limiting paragraphs (1) and (2), the guidance or directions may relate to conflicts of interest, the accounts of the Authority and their audit, borrowing by the Authority and the investment of the funds of the Authority.
- (4) It shall be the duty of the Authority in the performance of its functions to have regard to any guidance, and to act in accordance with any directions, given to it by the Committee under this Article.
- (5) The Committee shall not give guidance or directions under this Article without first consulting the Authority.

ARTICLE 11

Public Finances (Administration) (Jersey) Law 1967

For the avoidance of doubt it is hereby declared that for the purposes of Article 8 of the Public Finances (Administration) (Jersey) Law 1967,^[1] none of the monies received by the Authority is received on behalf of the States and the Authority is not an establishment under the supervision or administration of the States.

ARTICLE 12

Fees and charges

The Authority may charge, retain and apply in the performance of its functions -

- (a) fees and charges of such amounts, paid by such persons, and paid in such manner, as may be specified by or under this or any other enactment;

- (b) fees for the performance of its function under Article 6(4);
- (c) such fees and charges (not inconsistent with this or any other enactment) of such amounts, paid by such persons, and paid in such manner, as may be decided by the Authority in respect of any service, item, or matter, that does not arise under this or any other enactment; and
- (d) such fees and charges (not inconsistent with this or any other enactment) as may be agreed between the Authority and any person for whom the Authority provides advice, assistance or other services under this or any other enactment, in respect of the advice, assistance or other services.

ARTICLE 13

Grants to Authority

(1) The States may make a grant to the Authority from their annual income towards the expenses of the formation of the Authority and its initial expenses.

(2) In respect of each financial year, the States may make a grant to the Authority from their annual income towards the Authority's expenses in performing any of its functions.

(3) The amount of any grant referred to in paragraph (1) or (2) shall be determined by the Finance and Economics Committee on the recommendation of the Industries Committee made after consultation with the Authority.

(4) In determining that amount, the Finance and Economics Committee shall have regard to the actual financial position and the projected financial position of the Authority.

(5) In making that recommendation, the Industries Committee shall have regard to the actual financial position and the projected financial position of the Authority.

ARTICLE 14

Consent to borrowing

(1) The Authority shall not borrow money without the consent of the Industries Committee.

(2) The Finance and Economics Committee may, on such terms as it may determine, on behalf of the States -

- (a) guarantee the liabilities of the Authority; or
- (b) lend money to the Authority.

(3) The Finance and Economics Committee may act under paragraph (2) only on the recommendation of the Industries Committee.

ARTICLE 15

Guidelines on investment

The Authority shall, in investing any of its funds, comply with any guidelines specified by the Committee.

ARTICLE 16

Exemption from income tax

The income of the Authority shall not be liable to income tax under the Income Tax (Jersey) Law 1961.^[2]

ARTICLE 17

Accounts and audit

(1) The Authority shall -

- (a) keep proper accounts and proper records in relation to the accounts; and
 - (b) prepare accounts in respect of each financial year and provide these to the Committee as soon as practicable after the end of the financial year to which they relate, but in no case later than four months after the end of that year.
- (2) The Committee shall lay a copy of the accounts so provided before the States as soon as practicable after the Committee receives the report.
- (3) The accounts of the Authority shall -
- (a) be audited by auditors appointed in respect of each financial year by the Finance and Economics Committee; and
 - (b) be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the Authority for the period to which they relate and of the state of the Authority's affairs at the end of the period.
- (4) Article 113 of the Companies (Jersey) Law 1991^[3] shall apply to an auditor and his appointment referred to in this Article as if the Authority were a company within the meaning of the first-mentioned Article and the appointment were under Article 109 of that Law.

ARTICLE 18

Annual report

- (1) The Authority shall prepare a report on its activities in each of its financial years.
- (2) The Authority shall provide the Committee with the report as soon as practicable after the end of the financial year to which the report relates, but in no case later than four months after the end of that year.
- (3) The Committee shall lay a copy of the report so provided before the States as soon as practicable after the Committee receives the report.

ARTICLE 19

Limitation of liability

- (1) A person or body to whom this Article applies shall not be liable in damages for anything done or omitted in the performance or purported performance of any functions of the Authority conferred by or under this Law or any other enactment, or any other functions conferred by or under this Law, unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to the following -
 - (a) the States;
 - (b) the Committee, any member of the Committee, or any person who is, or is acting as, an officer, employee or agent of the Committee or performing any function on behalf of the Committee;
 - (c) the Authority, any member of the Authority, or any person who is, or is acting as, an officer, employee or agent of the Authority or performing any function on behalf of the Authority.

ARTICLE 20

Orders

- (1) The Committee may by Order make provision for the purpose of carrying this Law into effect.
- (2) An Order 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 Committee to be necessary or expedient for the purposes of the Order.
- (3) The Subordinate Legislation (Jersey) Law 1960^[4] shall apply to Orders made under this Law.

ARTICLE 21

Citation and commencement

This Law may be cited as the Competition Regulatory Authority (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint and different days may be appointed for different purposes or different provisions of this Law.

^[1] Volume 1966-1967, page 593.

^[2] Volume 1961-1962, pages 197 and 443, Volume 1963-1965, pages 97, 143, 178, 189, 423 and 454, Volume 1966-1967, page 523, Volume 1968-1969, pages 38 and 219, Volume 1970-1972, pages 209, 305 and 382, Volume 1973-1974, page 275, Volume 1975-1978, pages 47, 148 and 257, Volume 1979-1981, pages 16, 157, 297 and 383, Volume 1982-1983, page 46, Volume 1984-1985, page 76, Volume 1986-1987, pages 192 and 208, Volume 1988-1989, pages 222 and 380, Volume 1990-1991, pages 96, 432 and 1088, Volume 1992-1993, pages 36 and 121, Volume 1994-1995, pages 220 and 366, Volume 1996-1997, pages 264, 643 and 652, Volume 1998, pages 3 and 259, Volume 1999, pages 209, 390, 403 and 418 and Volume 2000, page 290.

^[3] Volume 1990-1991, page 982, Volume 1998, page 269 and R & O 8941.

^[4] Tome VIII, page 849.