

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY (AMENDMENT)  
ORDINANCE, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Guernsey Competition and Regulatory Authority (Amendment) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Guernsey Competition and Regulatory Authority Ordinance, 2012 ("the Ordinance"):

- i. to extend the power of the Guernsey Competition and Regulatory Authority (the "Authority"), under paragraph 13 of Schedule 1 to the Ordinance ("Schedule 1"), to arrange for any of its functions under the Ordinance, any relevant Ordinance, or any other enactment to be exercised in its name by any of its members, officers or employees (the "power of delegation"), so that the power of delegation extends to certain functions which would otherwise be excluded, as a result of the provisions of paragraph 13(1)(b) of Schedule 1.
- ii. to clarify, for the avoidance of doubt, that the Chief Executive of the Authority may further delegate functions that have been delegated to him by the Authority under paragraph 13(1) of Schedule 1.

Section 2 inserts a consequential amendment, to make paragraph 13(1)(b) of Schedule 1 subject the provisions of a new paragraph 13(3).

Section 3 inserts a new paragraph 13(3) to Schedule 1, which specifies the functions that may be the subject of an arrangement of the Authority under paragraph 13(1), notwithstanding the provisions of paragraph 13(1)(b).

Section 4 amends paragraph 14 of Schedule 1 to clarify, for the avoidance of doubt, that the power of the Chief Executive of the Authority to arrange, by an instrument in writing, for any of his functions under the Ordinance, any relevant Ordinance, or any other enactment to be exercised in his name by any of the officers or employees of the

Authority named or described in the instrument, extends to any functions that have been delegated to him by the Authority under paragraph 13(1) of Schedule 1. This provision ensures that the principle of administrative law known as *delegatus non potest delegare* does not operate so as to prevent delegated powers from being further delegated in these circumstances.

The Ordinance shall come into force on the 1st May, 2020.

# **The Guernsey Competition and Regulatory Authority (Amendment) Ordinance, 2020**

**THE STATES**, in pursuance of their Resolution of the 18<sup>th</sup> July, 2019<sup>a</sup>, and in exercise of the powers conferred on them by sections 1, 5 and 6 of the Competition (Enabling Provisions) (Guernsey) Law, 2009<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

## **Amendment of 2012 Ordinance.**

1. The Guernsey Competition and Regulatory Authority Ordinance, 2012<sup>c</sup> is amended as follows.

2. In paragraph 13(1)(b) of Schedule 1 immediately before the words “any function which” insert “subject to the provisions of subparagraph (3),”.

3. After paragraph 13(2) of Schedule 1 insert the following subparagraph -

“(3) Notwithstanding the provisions of item (b) of subparagraph (1), the following functions may be the subject of an arrangement of the Authority under subparagraph (1) and are accordingly not excluded by item (b) from the application of that subparagraph -

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<sup>a</sup> Article 4 of Billet d'État No. XIII of 2019.

<sup>b</sup> Order in Council No. XV of 2009; amended by Ordinances No. XIII of 2012; and No. IX of 2016.

<sup>c</sup> Ordinance No. XIII of 2012; amended by No. IX of 2016.

- (a) to serve a notice on an undertaking under section 23(1), (2) or (3) of the Competition Ordinance requiring the furnishing or production of information or documents,
- (b) to refuse an undertaking consent for the provision of copies of documents under section 26 of the Competition Ordinance instead of originals or to impose, vary or rescind any term, or condition in respect of any such consent,
- (c) to give an undertaking a direction under section 27(1) of the Competition Ordinance,
- (d) to refuse an undertaking access to documents or to allow an undertaking to copy documents under section 28(2) of the Competition Ordinance or to impose, vary or rescind any term or condition in respect of any such access or copying,
- (e) to exercise any relevant power in relation to an undertaking (to the extent that the power is one of the functions specified in any other item of this subparagraph) at the request of an overseas competition authority (within the meaning of section 60 of the Competition Ordinance) under section 30(1) of that Ordinance,

(f) to omit, pursuant to the provisions of section 45(2) of the Competition Ordinance, any matter from a statement of reasons given to the undertaking, and

(g) without prejudice to item (f), to exercise any function set out in sections 43, 44 and 45 of the Competition Ordinance in relation to any function specified in any other item of this subparagraph;

and in this subparagraph the “**Competition Ordinance**” means the Competition (Guernsey) Ordinance, 2012.”.

4. In paragraph 14 after the words “or any other enactment” insert “(including, for the avoidance of doubt, any functions delegated to him by the Authority under paragraph 13(1))”.

**Citation.**

5. This Ordinance may be cited as the Guernsey Competition and Regulatory Authority (Amendment) Ordinance, 2020.

**Commencement.**

6. This Ordinance shall come into force on the 1<sup>st</sup> May, 2020.