

# STATES OF JERSEY



## DRAFT EMPLOYMENT (AMENDMENT No. 8) (JERSEY) LAW 201-

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Lodged au Greffe on 3rd June 2014  
by the Minister for Social Security

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STATES GREFFE





Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 8) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 8) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator F. du H. Le Gresley**

*Minister for Social Security*

Dated: 2nd June 2014

## REPORT

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### SUMMARY OF FAMILY-FRIENDLY PROPOSALS

The Draft Employment (Amendment No. 8) (Jersey) Law 201- would introduce the following family-friendly rights into the Employment (Jersey) Law 2003:

1. **Antenatal care** – Paid time off work to attend ante-natal appointments (no qualifying period of service).
2. **Maternity leave** – a maximum of 18 weeks’ maternity leave and the right to return to the same job after the relevant period of maternity leave.

With no qualifying period of service –

- 2 weeks’ compulsory leave immediately after childbirth at full pay (paid by the employer, subject to the deduction of Maternity Allowance); and
- 6 additional weeks’ unpaid maternity leave which may be taken before or following the birth;

and, subject to 15 months’ service –

- an additional 10 weeks’ unpaid leave.

3. **Parental leave** (referred to as paternity leave in the UK) – With no qualifying period of service, 2 weeks’ unpaid parental leave for a man or woman (other than the mother) who has, or expects to have, parental responsibility for the child.
4. **Adoption leave** – The right to unpaid leave on the adoption of a child of any age; the periods of leave being equivalent to maternity and parental leave, but available to either adoptive parent, irrespective of gender –
  - up to 18 weeks’ adoption leave, consisting of 8 weeks’ unpaid leave with no qualifying period of service, and an additional 10 weeks’ unpaid leave if the employee has 15 months’ service with their employer; and
  - 2 weeks’ unpaid leave for the other parent.
5. **Flexible Working** – Employees who have caring responsibilities (for adults and children) will have the right to request a change to their working conditions, including, for example a change to hours, times or location of work, subject to 15 months’ service with their employer.
6. **Detriment and dismissal** – Protection against detriment and dismissal on grounds relating to pregnancy, maternity and the above rights.

### INTRODUCTION

This first stage of family-friendly rights provides fundamental entitlements upon which we can build in the future. The package of proposals provides for important new rights to maternity or adoption leave, parental leave and paid time off to attend ante-natal appointments. It also gives employees a right to request flexible working hours to allow them to provide care for a child or another person. The proposals have been carefully balanced to minimise any adverse effect on business. By international standards, the proposed new rights are modest, but their significance should not be underestimated.

In the past, women commonly took a career gap to bring up a family, but it is now more typical for women to take a short break before returning to work, and for men to want to take a more active role in early years child care. Jersey has a high proportion of women in the workplace, but lags behind other jurisdictions in the provision of

appropriate protection. Many parents want to work, but find it difficult to balance this with their family responsibilities<sup>1</sup>.

Family-friendly approaches to working are common around the world, and the economy is likely to benefit from measures that allow working mothers to more effectively combine their parenting responsibilities with employment. The new rights also provide clarity and a level playing field for employers and are structured in such a way as to allow effective forward planning for businesses.

It is recognised that the proposed entitlements would bring a small cost to employers in respect of paid time off work to attend ante-natal appointments and 2 weeks' compulsory maternity leave at full pay, subject to the deduction of Maternity Allowance where the woman is entitled to receive it. It should be remembered however that, even without these new rights, the pregnancy of an employee will bring administrative implications for an employer. It is expected that the new rights will create genuine benefits for employers in terms of productivity and reduced administration costs. The skills and experience of women returning to work following maternity leave will be retained, and the employer will be saved the cost of having to recruit and train new staff. The exact balance between the economic costs and benefits is unclear and it is harder to measure the benefits than the costs.

This overall package of measures promotes the health of the woman and her child in the weeks surrounding childbirth, as well as supporting parents more generally in balancing their work and family responsibilities. The potential benefits to the proposed new rights include –

- Safeguarding the health of the pregnant woman during pregnancy and in the weeks immediately after giving birth
- Ensuring that taking time off work for ante-natal care does not have to be a financial choice for the mother
- Increased likelihood of breastfeeding and more time for mothers to breastfeed and establish a feeding routine
- Improved child development and health (e.g. increased immunisation)
- Increase the likelihood of women returning to the labour market
- Staff retention – minimise the risk of losing valuable staff members and loss of skills, reduced turnover and training costs
- A straightforward system with plenty of notice for the employer that supports business planning
- Permitted contact during maternity leave encourages communication and reduces uncertainty and disruption for the employer
- Improved staff morale and productivity
- Family-friendly workplaces become more commonplace
- Creating a level playing field for employers.

The duration of maternity leave is obviously a key issue. There is some evidence that whilst longer periods of maternity leave have a positive effect on the take-up of maternity rights, more time out of the labour market potentially has a negative effect on women's longer-term career prospects (e.g. earnings) and the likelihood of her

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<sup>1</sup> See a summary of relevant outcomes from the Jersey Annual Social Survey (2007, 2008 and 2013) on pages 19–20.

returning to work<sup>2</sup>. It will be important to review these effects in more detail if the period of leave is to be extended in the future. A shorter period of leave is likely to be more readily accommodated by employers, requiring less planning in advance and potentially having less impact on the business and other staff. An employee's return to work after a shorter period of leave is likely to be more informal and straightforward than reintroducing a member of staff after a longer period of leave.

The Minister is committed to instigating a review of the family-friendly legislation that would commence one year after the new rights come into force (i.e. September 2016), which would include consultation on a second stage of family-friendly rights with extended periods of leave. In the meantime, the draft legislation specifically reflects the rights that were proposed by the Employment Forum, as accepted by the former Minister for Social Security<sup>3</sup>, Senator I.J. Gorst, in 2010.

As part of the current package of improvements for parents, the Minister for Social Security ("the Minister") intends to bring for States debate in July, a draft amendment to the Social Security (Jersey) Law 1974 which would enable a number of complementary changes to be introduced including –

- The Maternity Allowance claim period will be amended so that women have the option to start the 18 week Maternity Allowance period closer to the birth so that the woman may take as much leave as possible following the birth with benefit (where entitled).
- "Keeping in touch days" will be allowed during 16 weeks of the maternity leave without loss of Maternity Allowance for those days.

These proposed changes to Social Security legislation may bring a potential cost. The Department will review the funding and administrative changes that will be required prior to enacting these changes next year.

Family-friendly rights in the workplace are closely linked with protection against sex discrimination. If Jersey were to introduce sex discrimination legislation without any additional provisions regarding maternity rights, any less favourable treatment which has its root cause in pregnancy is likely to be seen by a tribunal as direct sex discrimination, as pregnancy is a gender-specific condition. Without sex discrimination legislation, the proposed family-friendly legislation would protect parents who are already working, but there is a risk that parents (women of childbearing age in particular) may suffer in recruitment, particularly if employers consider the new rights to be onerous.

The Minister intends that sex discrimination Regulations would commence on the same date as family-friendly legislation (planned for 1st September 2015). Consultation on sex discrimination has been undertaken, and the Minister will consider the responses before authorising the preparation of Regulations for lodging in early 2015.

In the interim period, active measures will be taken to help employers to be fully prepared, focusing efforts on small businesses. The JACS website already provides details of the Minister's proposals and simple introductory guides to the proposed new rights<sup>4</sup>. The JACS website recommends: "*that employers work towards introducing a Maternity, Paternity and Family Friendly Policy that, as a minimum standard, reflects*

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<sup>2</sup> [www.europarl.europa.eu/document/activities/cont/201010/20101005ATT85068/20101005ATT85068EN.pdf](http://www.europarl.europa.eu/document/activities/cont/201010/20101005ATT85068/20101005ATT85068EN.pdf)

<sup>3</sup> The Forum's recommendation and the former Minister's response are available on the website: [www.gov.je/employmentforum](http://www.gov.je/employmentforum)

<sup>4</sup> [www.jacs.org.je](http://www.jacs.org.je)

*the intended legislation*". Detailed guidance will be prepared subject to States' approval of the draft Law, and JACS training courses specifically on the proposed family-friendly rights will be available from September this year at no cost to delegates. In addition, the JACS outreach service<sup>5</sup> will continue to provide hands-on support to help small businesses adjust to the new concepts and responsibilities.

Maternity and sex discrimination legislation in the UK has evolved over decades. The Minister believes that it is vital that we put in place this first stage of new rights in 2015 as a sensible first step that businesses can accommodate, along with protection against sex discrimination and the proposed improvements to maternity benefits, before we look to extend the periods of leave in the future. Whilst some people will consider that the proposals should go further, it is important that we have the opportunity to assess the impact and effectiveness of the new rights through further consultation, particularly as any extension of family-friendly rights is likely to bring more significant funding and administrative implications, both for employers and for the States of Jersey; for example, the cost of extending the Maternity Allowance benefit period from the current 18 weeks.

The rights to maternity leave provided by the draft Law are quite appropriately provided only to mothers to enable them to recover from childbirth and establish breastfeeding, if they so choose. However, in the longer term it may be appropriate to introduce a longer period of parental leave for the purpose of allowing a parent to look after the child at home. In order to be compatible with Article 14 of the European Convention on Human Rights<sup>6</sup>, any entitlement to parental leave would probably need to be made available to either parent, rather than being restricted just to mothers.

Shared parental leave is an aspiration, but due to the complex administration and policy issues, the Employment Forum had recommended in 2008 that further consultation would be required to determine how to provide the necessary flexibility for such a system, including in the benefits system. This would be complex as a first step for Jersey. At this stage, the intention is to provide a strong safety-net of fundamental entitlements that will protect mothers in the weeks surrounding childbirth for recovery and breastfeeding, support working parents generally, and that will facilitate a return to the workplace for the benefit of employees and employers.

#### **DETAIL OF PROPOSALS**

The proposed amendment would introduce the employment rights that were recommended by the Employment Forum ("the Forum") in 2008 and set out in a response to the recommendation issued in 2010 by the former Minister for Social Security, Senator I.J. Gorst.<sup>7</sup> The Forum's recommendation was based upon extensive public consultation. It had been intended that law drafting would begin in 2009 but, following the economic downturn, priority was given to introducing statutory redundancy pay and developing an insolvency scheme. Whilst the consultation was undertaken some years ago, there is no reason to believe that anything has changed in the interim that would make the introduction of these basic rights inappropriate. Further consultation would simply delay the new rights, as well as the introduction of protection against sex discrimination.

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<sup>5</sup> [www.jacs.org.je/about-jacs/small-organisations-outreach-service/](http://www.jacs.org.je/about-jacs/small-organisations-outreach-service/)

<sup>6</sup> See Appendix 2 for the Human Rights compliance notes provided by the Law Officers' Department

<sup>7</sup> The Forum's recommendation and Minister's response are available on the website: [www.gov.je/employmentforum](http://www.gov.je/employmentforum)

## **1. Ante-natal care**

From the start of employment, pregnant employees will have the right to paid time off work to attend ante-natal care appointments. This applies to appointments for essential care and examinations that are recommended by a medical professional and would not include, for example, optional parenting classes. An employer is entitled to ask for proof of appointments, such as an appointment card. This is a generally accepted right in the UK which attracts little case law.

The Forum had recommended that a woman should not have to make ante-natal care a financial decision, to the possible detriment of her own health and that of her unborn child. On the grounds of health and safety, the Forum recommended that there should be no qualifying period of employment for the right to time off work for essential ante-natal appointments. The UK and the Isle of Man do not require a woman to have a minimum period of service before she qualifies to take paid time off from work to attend an ante-natal appointment.

For practical reasons, as recommended by the Forum, the woman is not required by law to seek her employer's agreement to the specific length of time that she needs off work for an appointment. This is not always possible as waiting times can vary; clinic appointments generally taking longer than a doctor's appointment. It is anticipated that JACS guidance will provide more details to help employers manage this; for example, what an employer might expect in terms of a reasonable amount of time off, the likely timescales involved for a normal regime (around 10 appointments during the pregnancy) and that employers should be notified in advance of the dates and times of appointments, where possible.

## **2. Maternity leave**

Women will have the right to a maximum of 18 weeks' maternity leave, which is intended to provide women with recovery time after childbirth and sufficient time to establish a breastfeeding routine. The period of leave matches the maximum number of weeks' Maternity Allowance that a woman may claim from the Social Security Department.

The first 2 weeks' leave immediately following childbirth will be compulsory maternity leave, during which time the employer must not permit an employee to work and must provide full pay, subject to the deduction of any Maternity Allowance received by the employee<sup>8</sup>. Six additional weeks' unpaid maternity leave may be taken at the woman's discretion, before or after the birth. There will be no qualifying period of employment for this right, which is in accordance with internationally recognised standards<sup>9</sup>, to safeguard the health of the mother.

An additional 10 weeks' unpaid leave will be available to a woman with 15 months' service. Social Security data for the year 2012 allows us to estimate that around 75% of women had one year's service or more, and 55% had 2 years' service or more, and so the majority of working women would qualify for the additional 10 weeks' leave.

A woman must tell her employer that she is pregnant and wishes to take maternity leave no later than 15 weeks before the baby is due, or as soon as is reasonably practicable. The 15th week is appropriate because legal termination rights are available in Jersey before the end of the 24th week of pregnancy.<sup>10</sup> There will be

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<sup>8</sup> See page 17 for more details about Maternity Allowance.

<sup>9</sup> See page 16 for a summary of international standards.

<sup>10</sup> Under normal conditions, terminations are available until the 12th week of pregnancy in Jersey. Terminations between 12 and 24 weeks are only available in specified circumstances, including that the woman's life would be in danger if the pregnancy continued.



circumstances that reasonably override the notice period requirement, such as where a woman did not know that she was pregnant. A level of complexity is required in the legislation to deal with all of the possible scenarios, but in most cases the procedure will be straightforward. Small businesses are particularly vulnerable to short-term disruption and changes of plans, and so the relatively long notice periods required to be given to the employer will help employers to make any necessary arrangements.

Other than pay, all terms and conditions of employment will continue to apply during maternity leave, and the woman continues to be employed during that period, e.g. holiday entitlement continues to accrue. She will have the right to return to the same job following her maternity leave if she returns to work immediately.

As in the UK, ‘keeping in touch days’ will be permitted which means that, except during the compulsory leave period, a woman may work during her maternity leave without the maternity leave period ending. However, the employer will not be able to insist on any work being done during maternity leave, and the woman will have the right to remain absent during the whole period of the leave. The Minister intends to propose an amendment to the Social Security Law so that a woman may also continue to receive Maternity Allowance on days that she works during this period. Guidance will provide further details for employers and employees around agreeing the number and purpose of ‘keeping in touch days’, e.g. for a specific meeting or training course, rather than for a full day’s normal work. The encouragement of ‘keeping in touch’ days reduces uncertainty and disruption for the employer and the employee.

### **3. Parental leave**

An employee will be entitled to take 2 weeks’ unpaid parental leave if he or she has, or expects to have, parental responsibility for a child. The person must be either the father of the child, or must be married to, the civil partner of, or the partner of the mother or adopter. A partner is defined as a person who lives with the mother and child in an enduring family relationship, but who is not an immediate relative.

Given that parental leave is unpaid, the 2 weeks’ leave will be available with no qualifying period of service. The employee will be obliged to advise their employer of their intention to take parental leave 15 weeks before the expected date of birth (not necessarily the intended leave date). This means that only employees with more than 15 weeks’ service will have the right to take parental leave, unless it was not reasonably practicable to have given the employer notice earlier.

Leave will have to be taken within 8 weeks of the baby being born (or adopted) in blocks of one week, unless the employer and employee have agreed that the leave may be taken in a more flexible way (e.g. individual days). This will allow sufficient flexibility for special situations to be taken into account, such as where the baby might be in hospital for a longer period, but is limited enough to ensure that the leave is taken for the purpose of caring for the baby and supporting the mother or adopter.

### **4. Adoption leave**

Adoptive parents will be entitled to leave which is essentially equivalent to maternity and parental leave; 8 weeks’ unpaid leave from the start of employment, and an additional 10 weeks’ unpaid leave if the employee has 15 months’ service with their employer, and 2 weeks’ unpaid leave for the other adoptive parent.

An adoptive parent will not be entitled to a 2 week paid compulsory leave period for an adoptive parent given the absence of the need for physical recovery following childbirth. Where there are 2 adoptive parents, one will be able to choose to take the full adoption leave period and the other – irrespective of gender – will be entitled to take 2 weeks’ parental leave (as described in paragraph 3).

The employee will be required to notify the employer within 7 days of having been given official notification of being matched with a child. Adoption placements often happen at short notice after a couple have waited a long time to be notified of a suitable placement. Separate provisions are made for an overseas adoption because the process is different. As with maternity leave, a level of complexity is required in the legislation to deal with the different scenarios, but in most cases the procedure will be straightforward.

There are currently around 6 to 7 adoptions each year in Jersey (including both local and inter-country adoptions). A one-off Adoption Grant payment is available to adoptive parents from the Social Security Department, which is an equivalent lump sum to the Maternity Grant (£574.14).

## **5. Right to request flexible working**

Employees will have the right to request a change to their working conditions, including a change to their hours, times or location of work, where the proposed change will enable them to provide care for a child or an adult. Employees must have at least 15 months' continuous service with their employer at the time of making the request. Social Security data for the year 2012 allows us to estimate that around 75% of people working in Jersey had one year's service or more, and 57% had 2 years' service or more, and so the majority of people working would qualify for this right.

The employee does not have to be related to the person that they are providing care for, however the employee must notify their employer if they will receive any remuneration or reward (except Social Security benefits)<sup>11</sup> in return for providing that care, and the employer may refuse the request on those grounds.

Common types of flexible working, as described in the ACAS guidance,<sup>12</sup> include –

- Part-time working
- Job-sharing
- Working from home
- Term-time working
- Shift-working
- Flexi-time; employees may be required to work within 'core times'
- Staggered hours: e.g. employees in the same workplace have different start, finish and break times to cover long opening hours
- Annual hours: e.g. split into 'set shifts' and 'reserve shifts' which are worked as demand dictates over the period of a year
- Compressed working hours: e.g. a 5 day week in 4 days.

The employer will be obliged to hold a meeting with the employee and inform them of the decision regarding the requested change within 6 weeks of the request. Where a request is refused, the employee will have a right of appeal. As in the UK and Isle of Man, the legislation sets out a wide range of business grounds on which an employer may refuse a request.

The UK introduced the right to request flexible working for parents of young children and disabled children in 2003. The right was extended to cover carers of adults in 2007. It has been regarded as a successful right in the UK, with little burden for

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<sup>11</sup> A person who is a carer may be entitled to receive Home Carer's Allowance and additional Income Support payments if they satisfy the relevant conditions. See the States website:

[www.gov.je/Benefits/Allowances/Pages/HomeCarersAllowance.aspx](http://www.gov.je/Benefits/Allowances/Pages/HomeCarersAllowance.aspx)

<sup>12</sup> [www.acas.org.uk/index.aspx?articleid=803](http://www.acas.org.uk/index.aspx?articleid=803)

employers or case law. It does not give employees the right to enforce a change to their terms and conditions of employment, but it requires an employer to take such a request seriously and provides a clear process for employers to follow. The perceived value of the right to request flexible working to parents in Jersey as a measure to encourage parents to return to work sooner, and to make working easier for parents, is demonstrated through the views collected in the 2013 Jersey Annual Social Survey (see page 20).

## **6. Detriment and dismissal**

Provision will be made so that an employee is protected against detrimental treatment for reasons relating to the new rights, including: pregnancy, giving birth, adoption, requesting flexible working and seeking to take a period of maternity, parental or adoption leave. Detriment might include, for example, changing the working hours of a woman who has recently become pregnant or not promoting a woman who has recently given birth.

When an employer terminates an employee's contract, this is classed as a dismissal under the Employment Law. The Employment Law provides a number of "automatically" unfair reasons for dismissal where the normal upper age limit and length of service requirements do not apply. This will include where the reason or principal reason for a dismissal relates to an employee's pregnancy or adoption of a child, requesting flexible working, and the taking of a period of statutory maternity, paternity or adoption leave.

The UK law previously included a small business exception so that, whilst an employee could claim unfair dismissal if her employer did not permit her to return to work after her maternity leave, it could not be automatically unfair if the employer had 5 employees or less and could show that it was not reasonably practicable for the business to keep the job open. The right to return to work in the UK at that time extended for 40 weeks following the birth of the child, and so the burdens on small businesses were greater than would be the case with the shorter period of leave being proposed for Jersey. In any event, the exception was effectively overtaken by the developing law on sex discrimination based on pregnancy, and was abolished altogether when the UK implemented the Pregnant Workers' Directive in 1994.

## **7. Other Employment Law amendments**

A number of additional points that are not related to family-friendly rights are addressed in the draft amending Law, including –

- (a) Rest periods – To provide that a rest period must be an uninterrupted rest period where the employer does not require the employee to be available to the employer for the purpose of undertaking a work-related action, and does not require the employee to attend the employer's workplace or be at or near that workplace. It also makes provision for compensatory rest to be provided within 14 days. The Employment Law currently does not define "uninterrupted rest period". This potentially poses problems for businesses that rely on call-out and standby arrangements, because it is not clear whether time spent on call or on standby can count as uninterrupted rest. The proposed amendment is based on a 2013 recommendation of the Employment Forum.<sup>13</sup>
- (b) Notice period – To require that, where an employee has been continuously employed for one week or more, but less than 26 weeks, they must give

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<sup>13</sup>[www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/ID%20Codes%20of%20Practice%20Recommendation%20July%202013%2020130726%20JJ.pdf](http://www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/ID%20Codes%20of%20Practice%20Recommendation%20July%202013%2020130726%20JJ.pdf)

their employer a minimum of one week's notice when terminating a contract of employment. Currently, if an employee who has been employed for less than 26 weeks wishes to terminate their employment, the Law does not require that they give any notice to their employer. JACS recommended to the Minister that the Employment Law should be amended.

- (c) Calculation of redundancy pay – To specify that, for the calculation of a redundancy payment, the mean average weekly earnings figure applies as the maximum weekly amount. The Law currently provides that the average earnings figure applies; however, the States of Jersey Statistics Unit now releases 2 weekly average earnings figures; a 'mean' and a 'median'. This clarification provides more certainty for employers and employees.
- (d) Redundancy pay and insolvency benefit – To provide that, for the purpose of calculating an employee's redundancy pay entitlement, a redundancy payment is treated as having been paid (and so breaks continuous employment) when an employee is entitled to receive the redundancy pay component of insolvency benefit.<sup>14</sup> This accords with the UK position.<sup>15</sup> This is essential so that, if an employee is re-employed by the same employer following redundancy, they are not entitled to redundancy pay twice in respect of the same period of service.

## **STATES STRATEGIC PLAN 2012**

The introduction of family-friendly legislation contributes both directly and indirectly to a number of the commitments set out in the current States Strategic Plan. In working towards its vision, the plan for the next 3 years includes the following relevant priorities:

- **PRIORITY – Get people into work**

According to the States Strategic Plan, the most urgent priorities include getting unemployed Islanders into work and keeping people in work. Family-friendly rights help to maximise the potential of the Island's workforce by enabling increased participation rates and removing barriers to work. Key factors in relation to this priority, as stated in the Strategic Plan, include:

- The increasing cost of benefits and the social impact of unemployment. Incentives to return to work (or return earlier) rather than continue to rely on benefits include the right to return to the same job on the same terms and conditions after a period of maternity leave, and more opportunities for flexible working and parental leave.
- Improving the skills of the local workforce will reduce reliance on imported labour. Giving parents the right to return to their job after a period of leave and increasing opportunities for flexible working and parental leave retains appropriate skills in the workforce.
- The continued development of our international reputation as an outstanding place to do business. It is internationally unacceptable that Jersey does not provide fundamental protection for parents in the workplace. Jersey is almost unique in not providing a right to maternity leave.

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<sup>14</sup> Article 26C of the Social Security (Jersey) Law 1974

<sup>15</sup> Section 214 of the 1996 Employment Rights Act

- **PRIORITY – Manage population growth and migration**

The overall priority is to maintain a working-age population which enables the economy to flourish, and public services to be sustained, without threatening our environment and way of life. A key factor in relation to this priority is:

- To only grant permissions for new migrants to work where it is compellingly demonstrated that this will deliver sizeable economic or social value and locally qualified people are not available. By introducing provisions to retain the skills of parents in the workplace and ensuring that workplaces are more family-friendly, this will help to ensure that locally qualified people are available to work, and will support employers to retain and attract those locally qualified employees.

- **PRIORITY – Promote family and community values**

The overall priority is to provide appropriate support to both families and individuals in order to develop a strong sense of community where everyone is valued. Key factors in relation to this priority include:

- Enabling people to take more responsibility for their own lives and well-being. The new family-friendly rights will support parents in their choices relating to work and family, as well as increasing financial independence through the right to return to work after a period of maternity leave to the same terms and conditions of employment.
- Early investment and support for vulnerable children and families will improve the outlook for the individuals concerned and benefit society as a whole. The new family-friendly rights will provide the very earliest investment in the health of the mother and child in the weeks surrounding childbirth and ensure that antenatal care does not have to be a financial choice for the mother. Vulnerable children and families are also supported through the right to return to the same job, and the right to request flexible working to provide care for the family.
- Social policies need to promote equal opportunities and access to services, so that all members of society can share in the Island's success. The proposed new rights are essential to promote equal opportunities in the workplace, particularly for women. Working women who are pregnant, for example, are supported in accessing ante-natal services via the right to take paid time off work for ante-natal appointments, regardless of the woman's length of service or number of working hours.
- Tackling the challenges faced by disadvantaged families and children by addressing the root causes and consequences. Research indicates that there are links between a period of maternity leave and health and societal benefits, including: stronger mother and child bonding, reduced post-natal depression, improved child cognitive development, increased rates of immunisation, increased rates and duration of breastfeeding, and improved child health and development in later life.<sup>16</sup>

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<sup>16</sup>[www.europarl.europa.eu/document/activities/cont/201010/20101005ATT85068/20101005ATT85068EN.pdf](http://www.europarl.europa.eu/document/activities/cont/201010/20101005ATT85068/20101005ATT85068EN.pdf)

- **PRIORITY – Reform health and social service**

Key factors in relation to this priority include:

- Current institutional models of care mean that low numbers of adults live independently in the community and the projected increase in the older population will create a surge in demand for health and social care services. Enabling individuals to change their working hours to provide unpaid care for another person will enable more support to be provided in the home by family members and other members of the community.

#### **FINANCIAL AND MANPOWER IMPLICATIONS**

No additional funding or resources would be allocated to the Jersey Employment Tribunal specifically to deal with the introduction of this legislation. It is anticipated that existing budgets (allocated and requested) will be sufficient to provide the necessary services to enable employees to enforce these additional rights. Employee complaints relating to pregnancy and maternity are likely to include a sex discrimination complaint; the additional cost of enforcing that legislation will be included in the report to the States that accompanies the sex discrimination Regulations in 2015.

No additional funding or resources would be allocated to the Jersey Advisory and Conciliation Service specifically to deal with the introduction of this legislation. It is anticipated that existing budgets (allocated and requested) will be sufficient to provide the necessary services, including the advisory and training services. £5,000 will be allocated from existing budgets to enable JACS to provide public training courses on the family-friendly rights free to delegates in 2014 and 2015.

There are no financial implications for the States of Jersey as an employer because the States' maternity policy provides that all women are entitled to 2 weeks' maternity leave at full pay and paid time off work to attend ante-natal appointments.

#### **HUMAN RIGHTS**

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**APPENDIX 1 TO REPORT  
BACKGROUND INFORMATION**

**OTHER JURISDICTIONS**

***UNITED KINGDOM***

- (a) **Ante-natal appointments** – A pregnant woman is entitled to take paid time off work to attend medically recommended ante-natal appointments, irrespective of her length of service.
- (b) **Maternity Leave** – Women have the right to 52 weeks' maternity leave. Where a woman has worked for her employer for 26 weeks or more and she satisfies earnings and eligibility tests, she is entitled to statutory maternity pay at 90% of her previous earnings for the first 6 weeks and 33 weeks at £138.18 per week (or 90% of pay if that is lower). The system of funding statutory maternity pay in the UK originates from an historic Maternity Fund, which was funded through increases in employer's contributions. Employers are able to recover most of the statutory maternity pay by deducting it from their national insurance contributions. Where a woman is not entitled to statutory maternity pay, she may be entitled to receive Maternity Allowance instead, which is also paid at £138.18 per week (or 90% of average weekly earnings if that is less) for up to 39 weeks.
- (c) **Paternity Leave** – Where employees have 26 weeks' qualifying service, either one or 2 weeks' unpaid paternity leave may be taken within the first 8 weeks of the baby's birth by the father, partner or civil partner of the child's mother. Paternity leave is payable at the same rate as the basic statutory maternity pay (and Maternity Allowance). Additional paternity leave and pay may also be available for a maximum of 26 weeks between 20 weeks after the child is born and the child's first birthday. To qualify for this additional paternity leave, the child's mother must have started working again, and any relevant payment must have stopped, with at least 2 weeks of the 39 week payment period remaining. The remaining period of leave transfers to the father/partner.
- (d) **Adoption Leave** – An employee who has adopted a child, or who is one of a couple who have jointly adopted a child (via an approved adoption agency) has the right to 52 weeks' leave, subject to a 26 week qualifying period. Only one of the couple may take the leave and it is for the couple to decide. Leave is payable at the statutory maternity pay rate (£138.18 per week) for 39 weeks. The partner of the adopter is entitled to paternity leave.
- (e) **Right to request flexible work** – Employees may make a request if they have responsibility for the upbringing of a child under age 17, or under 18 if the child is disabled, and if they have certain responsibilities as carers. Employees must have 26 weeks' service and requests may cover changes to times, duration or location of work. Employers are not obliged to grant requests, but must follow a detailed procedure to consider and respond to the request. From June 2014, the UK Government is extending the right to request flexible work to all employees with 26 weeks' service and replacing the statutory procedure for considering requests with a duty to consider all requests in a reasonable manner. Employers will still be able to refuse requests on business grounds.

Some employer representative groups in the UK<sup>17</sup> are concerned that the change could increase the risk of discrimination claims, make it harder for those more in need of flexible working, and add unnecessary red tape. While the new procedure (a code of practice and good practice guidance) is intended to be light-touch, businesses will have to learn about the new administration and the change introduces some uncertainty.

### ***Isle of Man***

A number of rights were introduced by the Employment Act 2006 and Regulations made under that Act in 2007. All rights to leave are unpaid, unless the employee has a contractual entitlement to paid leave. Most employees receive maternity allowance, paternity allowance or adoption allowance from the Department of Social Care which is a maximum of £179.85 per week from April 2014.

- (a) **Ante-natal appointments** – A pregnant woman is entitled to take paid time off work to attend medically recommended ante-natal appointments, irrespective of her length of service.
- (b) **Maternity Leave** – A woman is entitled to take 26 weeks' unpaid Ordinary Maternity Leave and return to her job after the period of leave. A further 26 weeks' unpaid Additional Maternity Leave is available to a woman who has 26 weeks' service at the 14th week before her expected week of childbirth. Maternity Allowance is available for up to 39 weeks.
- (c) **Paternity Leave** – Where employees have 26 weeks' qualifying service, either one or 2 weeks' unpaid paternity leave may be taken within the first 8 weeks of the baby's birth. Two weeks' Paternity Allowance is available at the same weekly rate as Maternity Allowance.
- (d) **Adoption Leave** – An employee who has adopted a child, or who is one of a couple who have jointly adopted a child, has the right to the equivalent of the maternity leave period. Only one of the couple may take the maternity leave period, and it is for the couple to decide. The partner of the adopter is entitled to paternity leave. Adoption allowances are available that are equivalent to the maternity and paternity allowances.
- (e) **Right to request to flexible working** – A right to request to vary working hours in order to accommodate caring responsibilities is available to employees with 26 weeks' qualifying service who are parents of children under 6, parents of disabled children under 18, and those who have defined caring responsibilities. Employers may justify a refusal to adjust working hours on business grounds. Employers are not obliged to grant requests, but must follow a statutory procedure to consider and respond to the request.

### ***Guernsey***

At present, there is no law in Guernsey requiring employers to provide maternity leave. Proposals have been announced and were expected to come into force in early 2014, but have been delayed. In 2012, the States of Guernsey approved in principle the following proposed unpaid periods of leave:

- (a) 2 weeks' compulsory maternity leave for a woman, with no qualifying period of service.
- (b) An additional 10 weeks' basic maternity leave for a woman, with no qualifying period of service.

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<sup>17</sup> [www.bbc.co.uk/news/business-26436131](http://www.bbc.co.uk/news/business-26436131)



- (c) An additional 14 weeks' enhanced maternity leave for a woman, subject to at least 15 months' service prior to the expected date of childbirth.
- (d) 2 weeks' paternity leave for parents with at least 15 months' service, and
- (e) equivalent rights for adoptive parents.

Guernsey's Social Security Department has been asked to investigate a proposal that it should fund the periods of leave, with the estimated £1.9 million cost per year being funded by an approximate 0.2% increase in social security contributions, split equally between the employer and employee. Currently, a woman may claim either 18 weeks' maternity allowance (£144.90 per week) or a maternity grant (£362) if she is not entitled to the allowance.

Under the Sex Discrimination (Employment) (Guernsey) Ordinance 2005, it is likely that any less favourable treatment, which has its root cause in pregnancy, will be seen by the Employment and Discrimination Tribunal as direct sex discrimination because pregnancy is a gender-specific condition. For example, a woman might claim sex discrimination if she has been turned down for a job or promotion, has been refused time off to deal with childcare problem, or has not been properly consulted about a potential redundancy situation due to being absent from the workplace on maternity leave.

Guernsey's employment legislation provides that a dismissal is automatically unfair if the reason for dismissal was that the employee was pregnant, or for any other reason connected with her pregnancy. Selection of a woman for redundancy as a result of her pregnancy, or for any other reason connected with it, is also automatically unfair. Despite the lack of statutory maternity leave, if an employer refuses to allow a pregnant woman a reasonable period of time off work, they may face a claim for constructive unfair dismissal and sex discrimination.

#### ***Other countries and international standards***

The reconciliation of work and family life has become increasingly important in recent years across the European Union due to changes including: demographics, the pattern and demands of work, the composition of the labour force, family structures and the distribution of caring work between women and men.

The International Labour Organisation (ILO) Maternity Protection Convention, 2000 (183), which came into force in 2002, recommends that a woman "*shall be entitled to a period of maternity leave of not less than 14 weeks.*" It also states that: "*Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.*"

The European Union Pregnant Workers Directive (92/85/EEC) came into force in 1994. It states that "*Employees are entitled to 14 weeks continuous maternity leave before and/or after delivery ... The employment rights relating to the employment contract must be ensured, including the entitlement to an adequate allowance.*"

According to the ILO<sup>18</sup>, there has been a gradual improvement in maternity protection across the world over time. In 1994, 38% of countries for which information was available provided at least 14 weeks of maternity leave. Among the same set of countries, 48% provided at least 14 weeks of maternity leave in 2009.

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<sup>18</sup> 'Maternity at Work – A review of national legislation – Findings from the ILO Database of Conditions of Work and Employment Laws' (2010)

Across OECD<sup>19</sup> countries, maternity leave is an average of around 19 weeks. Some countries provide that short periods of leave are compulsory before and/or after birth. Almost all OECD countries have public income support payments relating to the taking of maternity leave. Paternity leave is not stipulated by international convention, but is generally 2 weeks or less across OECD countries. Some jurisdictions make provision for the parents to share a total parental leave entitlement (e.g. Australia, Germany, Iceland, New Zealand, Norway and Sweden).<sup>20</sup>

Maternity, paternity and parental rights vary greatly; however, other microstates worldwide make some provision for maternity leave (for example, the Cayman Islands, Bermuda and Bahrain). Many jurisdictions provide different levels of protection based on length of service and other qualifying conditions. Leave is often a combination of paid and unpaid periods; where paid leave is provided this is often subject to a cap, particularly when the pay is provided through a social security system. In most countries, pay during statutory maternity leave is funded by the State or health and social insurance schemes, although some countries supplement that by requiring additional payments from the employer. In some countries, parental leave is paid at basic benefit rates and others at a percentage of the employee's full pay.

No evidence was found of an exemption from maternity and paternity rights for small businesses operating in any other jurisdictions. The trend in employment laws in other jurisdictions had been to move away from small business exemptions. The Forum had recommended that there should not be a small business exemption from any family-friendly rights that may be introduced. Responses to the Forum's consultation were split (even amongst employer respondents) on the question of whether small businesses should be exempt. Those who supported an exemption generally did so because they felt that small businesses would not cope with the added cost. However, these recommendations would provide primarily unpaid periods of leave that are set at a level that should not cause undue harm to small businesses. If small businesses were to be exempt, any new rights would be ineffectual given that around three quarters of local businesses employ less than 6 employees in Jersey. If employees need legislative protection, it should generally be available to them irrespective of the size of an employer.

## **SOCIAL SECURITY BENEFITS**

**Maternity Grant** is a lump sum payment which may be paid either before or following birth to help with the general cost of having a baby. The current rate is £574.14 which is payable for each baby (including multiple births). To qualify, the mother or her husband/civil partner must have paid enough contributions for at least 3 months at any time before a set date (either the expected or actual date of childbirth). An equivalent grant for adoptive parents is also available where a person has been granted an adoption order.

**Maternity Allowance** is a weekly benefit paid to help a mother take time off work to give birth and look after her baby. The full rate per week is currently £191.38 (the amount paid is based on the mother's own contributions), and can be paid for a maximum of 18 weeks as compensation for loss of earnings while the woman is not working. Jersey's Maternity Allowance is more generous per week than the UK equivalent, but is available for fewer weeks in total (the UK benefit is paid for 39 weeks at £138.18 per week).

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<sup>19</sup> For the countries that have signed the Convention on the Organisation for Economic Co-operation and Development, see [www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm](http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm)

<sup>20</sup> [www.oecd.org/social/soc/oecdfamilydatabase.htm](http://www.oecd.org/social/soc/oecdfamilydatabase.htm)

The woman can choose when the Maternity Allowance period starts, which may be as early as 11 weeks before the expected week of childbirth, but no later than 6 weeks before the expected week of childbirth. Where a woman chooses to work, for example, until one week before the birth, she loses entitlement to 5 weeks' benefit. This criterion was based on medical opinion in the 1990s as a reasonable time for a woman to stop working before giving birth. Recent medical opinion, however, recommends that where there are no occupational hazards which could put the health of the mother or baby at risk, women should be able to continue working up to the birth as they choose and that healthy women, without pregnancy complications, who choose to continue working late into their pregnancy, should be supported in this.

Maternity Allowance was paid in respect of more than three-quarters (77%) of the births in Jersey in 2013 (see Table 1). The average number of weeks' Maternity Allowance paid was 15.6. This suggests that women may be starting their maternity leave on average 3½ weeks before giving birth.

**Table 1**

	<b>2013</b>
Births in Jersey	1,017
Maternity Allowance (MA) awards <sup>21</sup>	783
Average MA claim duration (days)	109 days
Average MA claim duration (weeks)	15.6

The Minister intends to propose an amendment to the Social Security Law (effective from 1st January 2015) that would allow a woman to start her Maternity Allowance claim much closer to the date of the birth. This is likely to slightly increase the States funding required for maternity allowance, as more women will claim the full 18 weeks of benefit.

In 2013, 244 women did not claim maternity allowance. Some of these women may not have been entitled to the benefit for various reasons, such as, she does not work and so does not satisfy the contribution conditions; she has opted out of paying contributions;<sup>22</sup> or she has continued to work (perhaps from home) and maternity allowance can only be paid where the woman is not working.

**Income Support** is an income-related benefit for Jersey residents that provides financial support towards the cost of living, housing, medical needs and childcare. The amount of Income Support payments vary according to household circumstances, including, for example, the number of dependent children in the household. The value of the child component is currently £63.98 per week. Claimants who are looking after a child under age 5 are not required to be working or actively seeking work. Assistance with the costs of childcare can be provided for parents who are working.

**Home Responsibility Protection** is available for people staying at home to look after a child under the age of 5 who is living with them. Protection is in the form of contribution credits which protect pension entitlement, but do not protect entitlement to incapacity or maternity benefits. A maximum of 10 years of credits can be awarded during a person's working life.

<sup>21</sup> Refers to Maternity Allowance claims started in 2013 where an amount of benefit was paid under the claim.

<sup>22</sup> The option for married women not to pay Social Security contributions was possible only for marriages that occurred before April 2001.

## DATA AND STATISTICS

### Economic activity – *Census 2011*

- The economic activity rate for **all adults** aged 16 or over has remained stable over the past 20 years.
- The rate for women has increased substantially over the past 50 years, from 37% in 1961 to 61% in 2011 (which was higher than the economic activity rate for women in the UK in 2011 – 57%).
- The economic activity rate for men has decreased from 86% in 1961 to 74% in 2011.
- Of the **working age** population in Jersey (age 16–64 for men and 16–59 for women) 82% were economically active.
- Over three-quarters (77%) of working age women were economically active (either working or looking for work), a slightly higher rate than that recorded in the 2001 census (76%).
- Of those who were economically inactive, 44% of the women of working age and 3% of the men were looking after the home.
- Men worked on average 39.7 hours per week and women worked on average 33.6 hours per week.
- 20% of working women worked part-time compared to 4% of men.

### Economic activity – *Jersey Annual Social Survey (JASS) 2013*

- 81% of all part-time workers (i.e. working less than 25 hours per week) were women.
- 17% of working women worked part-time, compared to 5% of working men.
- Men worked on average 40 hours per week and women worked on average 33 hours per week.

### Families, work and social policy – *JASS 2007*

- 23% of women were looking after their children and not working, compared to 1% of men.
- Three-quarters of parents who were not working planned to return to work at some point; 37% within 12 months and 14% within one to 2 years.
- One in ten (10%) parents who were not working stated that a reason preventing them from returning to work was the hours that they would be required to work.
- Parents who were looking after their children and not working were asked what would encourage or enable them to return to work sooner. Three-fifths (60%) said that flexible working hours would encourage them to return to work sooner. This was the most popular motivation identified, followed by “more opportunities to take unpaid leave” and “longer periods of unpaid leave”, which together were identified by 10% of parents. One in 5 parents (21%) who weren’t working said that nothing would encourage them to return to work.
- When all parents (working and not working) looking after dependent children were asked what would make work easier for them, half (52%) said flexible working, whilst a sixth (16%) said more opportunities to take child-related

unpaid leave, and another sixth (16%) said that nothing would make working easier for them.

- Three-fifths of parents (60%) felt it would be “Very difficult” or “Fairly difficult” to work the required hours in their job after returning to work. When asked the reasons, two-thirds of these parents said the cost of childcare, 56% said finding care for their children, and 48% said the amount of hours they would be required to work.

**Families, work and social policy – JASS 2008**

- 25% of women were looking after their children and not working, compared to 5% of men.
- Parents who were looking after their children and not working were asked what would encourage or enable them to return to work sooner. The most frequently cited response was more affordable childcare, identified by a third (33%) of parents. 19% of parents said that nothing would encourage or enable them to return to work sooner, and 18% said flexible working hours.

**Families, work and social policy – JASS 2013**

- All parents of children under age 16 were asked what would make working easier for them or encourage them to return to work. Cheaper childcare and flexible work were the 2 top factors, each identified by 28% of parents. Whilst opportunities to take family-related leave were identified as factors, flexible working appeared to be of greater importance to the parents.

**Table 2**

Cheaper childcare	28
Flexible work	28
Nothing	21
After-school, breakfast or holiday clubs	9
More opportunities to take child-related unpaid leave	8
Longer periods of maternity/paternity leave	2
Other	3

**Sex discrimination – JASS 2012**

- A quarter of respondents reported that they had been discriminated against at least once in the previous 12 months. For one in 20 people, the discrimination was on grounds of gender (5%).
- Women were more likely to report having been discriminated against on grounds of gender (9%) than men (2%).
- The most frequently cited location of the discrimination was at work (36% of respondents) and 23% reported discrimination when applying for a job.

## HISTORY

**1993 – Code of good practice** – In 1993, the States approved a voluntary code of good practice for maternity entitlement in employment (P.44/1993) which included recommendations for time off work for ante-natal care, maternity leave, maternity pay, protection against dismissal and reinstatement after maternity leave. The code was recommended as the basis for employers to follow when preparing terms and conditions of employment, and employers were encouraged to recognise the spirit of the code.

**1995 – Social Security Review** – In June 1995, a review was undertaken of the Social Security scheme in Jersey: ‘Continuity and Change’. It commented that “*security of jobs is perhaps the greatest concern of expectant mothers who wish to continue in work*”. It noted a proposal to introduce maternity pay as a contributory maternity benefit which would be paid at two-thirds of average earnings subject to a 15 month qualifying period of employment. The former Committee noted, amongst the difficulties of such a system, that it would result in the payment of a larger amount of benefit for a planned/known interruption in earnings, compared with an unplanned incapacity for work due to sickness or an accident.

**1996 – Maternity benefits proposition** – Following the review of the social security system, the States approved a report from the former Employment and Social Security Committee (“the former Committee”) which included a policy on Social Security maternity benefits (P.132/1996). The report noted the success of the current maternity allowance and grant, which is paid in respect of most births in Jersey. As maternity allowance is paid at the same rate as the other contributory benefits and pension (i.e. based on the person’s contribution record), the former Committee recorded that it was of the view that it would not be equitable to raise the level of maternity allowance to include an earnings-related component.

**1997 – Maternity policy** – In November 1997, the States agreed, via an amendment to the 1997 Strategic Policy Review and Action Plan, that a maternity policy should be introduced throughout the Island to match that offered by the States of Jersey to its employees. At that time, however, there were differing schemes for different employee groups (the schemes were consolidated in 1998).

**November 1998 – Fair Play Consultation** – The former Committee issued a consultation paper covering a range of employment legislation issues entitled “Fair Play in the Workplace”, which was widely circulated and debated publicly, and included questions on maternity and family-friendly policies. Responses included the following –

- 72% of the respondents supported a legal right to time off work for ante-natal care (79% of employees compared with 57% of employers).
- 67% of the respondents supported a legal right to maternity leave and return to the same or equivalent job (76% of employees compared with 47% of employers).
- 64% of the respondents supported a legal right to maternity pay during part of the maternity leave (72% of employees compared with 47% of employers). Small businesses were concerned that they would not be able to afford to pay an employee during maternity leave, as well as pay for a replacement employee.
- 79% of the respondents supported legal protection against unfair dismissal on maternity grounds (85% of employees compared with 64% of employers).

**2000 – Proposition for Employment Legislation** – The outcomes of the Fair Play consultation resulted in a Proposition to the States (P.99/2000, adopted, as amended, in 2000) which proposed that maternity and family-friendly legislation should be introduced in a second phase of employment legislation. There was concern about the lack of sex discrimination legislation; whereby, if there is no specific protection, some employers may stop employing women of childbearing age, or dismiss an employee when she becomes pregnant. The former Committee recommended that any family-friendly policies should be introduced gradually to allow business time to adapt.

**2007 – Employment Forum consultation** – Following the completion of Phase 1 of the employment legislation project, the Forum consulted extensively on family-friendly rights, and detailed responses were received from a large number of respondents representing a wide range of interests and industries.

**2008 – Employment Forum recommendation** – The Forum presented its recommendation to the former Minister for Social Security, Senator P.F. Routier, in June 2008. Many of those who responded to the consultation had indicated that it would be excessive to introduce the full range of new family-related rights at the same time. The Forum recommended that the new rights should be introduced in 2 stages: a minimum set of rights in Stage 1 and a second stage of legislation that would increase the number of weeks' leave.<sup>23</sup>

**2010 – Minister's response to the recommendation** – A response to the recommendations of the Forum and law drafting instructions were prepared by the former Minister for Social Security, Senator I.J. Gorst, in June 2010. The former Minister accepted the Forum's recommendations for Stage 1 of the family-friendly rights, but he also decided that the right to request flexible working should be moved from the recommended Stage 2 and introduced in Stage 1. The intention was to give parents and carers additional flexibility sooner, without introducing any extra cost to employers.

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<sup>23</sup>The Forum's recommendation and Minister's response are available on the website:  
[www.gov.je/employmentforum](http://www.gov.je/employmentforum)

## APPENDIX 2 TO REPORT

### Human Rights Notes on the Draft Employment (Amendment No. 8) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Employment (Amendment No. 8) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

*These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.*

The only issue of ECHR compatibility that the draft Law raises is with regard to Article 14 of the ECHR taken in conjunction with Article 8. These Articles of the ECHR provide that –

#### Article 8

*“1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

#### Article 14

*“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

Article 14 of the ECHR complements the other substantive provisions of the ECHR. It has no independent existence since it has effect solely in relation to “*the enjoyment of the rights and freedoms*” safeguarded by the ECHR and its Protocols. For Article 14 to apply, there need not be a breach of another ECHR right, but the facts at issue must fall within the ambit of another ECHR right.

Further, not every difference in treatment will amount to a violation of Article 14 of the ECHR. It must be established that other persons in an analogous situation enjoy preferential treatment and that this distinction is discriminatory. A difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or is not proportionate to that aim. The Contracting States to the ECHR enjoy a certain margin of appreciation in assessing whether, and to what extent, differences in otherwise similar situations justify a difference in treatment.

With regard to the subject matter of the draft Law, the case law of the European Court of Human Rights (“ECtHR”) draws a distinction between, on the one hand, maternity leave and associated benefits afforded to the mother to enable her to recover from



childbirth and breastfeed her baby; and on the other, parental leave and parental leave allowances that relate to the period thereafter and are intended to enable the beneficiary to stay at home to look after the infant personally<sup>24</sup>. In relation to the former, the position of the mother and father is not analogous for obvious biological reasons and no discrimination contrary to Article 14 of the ECHR can arise from any difference in treatment. In relation to the latter, while there may be differences between a mother and father in their relationship with a child, the ECtHR starts from the premise that both parents are in an analogous position and equally able to look after the child. Although the ECHR does not give rise to an obligation on States to provide parental leave, the provision of such leave comes within the scope of Article 8 of the ECHR because it affects the way that family life is organised. Therefore, if there were a difference in treatment between mothers and fathers with regard to parental leave, then Article 14 would apply, and it would be necessary to consider whether there were an objective and reasonable justification for the difference.

Article 6 of the draft Law amends the Employment (Jersey) Law 2003 (“the 2003 Law”) so as to afford a right to compulsory maternity leave (2 weeks’ duration) and to ordinary maternity leave (an additional maximum duration of either 6 weeks or 16 weeks depending on length of service). These entitlements may only be claimed by the mother. Separately, Article 6 of the draft Law amends the 2003 Law so that the father of a child, or spouse or civil partner of a child’s mother, may in certain circumstances claim a right to 2 weeks’ parental leave.

In view of the duration of the maternity leave entitlements afforded by the draft Law, it is evident that these are for the purpose of enabling the mother to recover from childbirth and breastfeed her baby, if she so chooses. They can properly then be viewed as a maternity rather than a parental leave entitlement. In view of that, any difference in treatment as between mothers and fathers with regard to maternity and parental leave under the draft Law cannot give rise to a breach of Article 14 of the ECHR, since they are not in an analogous position. In view of that, it is not necessary to consider whether there is an objective and reasonable justification for any difference in treatment or the margin of appreciation in order to conclude that the draft Law is compatible with the ECHR.

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<sup>24</sup> *Petrovic v. Austria*, Application No. 20458/92, paragraph 36; *Konstantin Markin v Russia*, Application No. 30078/06, paragraph 48

## Explanatory Note

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This Law amends the Employment (Jersey) Law 2003 so that employees may benefit from the following additional rights –

- (a) the right to require an employer to consider an application for flexible working arrangements;
- (b) the right to take time off for ante-natal care;
- (c) the unconditional right to compulsory paid maternity leave of 2 weeks immediately after giving birth;
- (d) the right to ordinary maternity leave (in addition to compulsory maternity leave);
- (e) the right to adoption leave;
- (f) the right to take parental leave following the birth or adoption of a child;
- (g) the right to be protected from detriment or dismissal when exercising any of the rights described in paragraphs (a) to (f).

This Law also makes amendments to the requirement of an employer to provide rest periods to an employee; the notice periods that an employee must give to his or her employer when terminating a contract of employment; and the method for calculating one week's pay for certain purposes.

*Article 1* defines “principal Law”, which is a term used throughout this explanatory note and this Law, as the Employment (Jersey) Law 2003.

*Article 2* amends Article 10 of the principal Law to provide that a rest period must be an uninterrupted rest period, where the employer does not require the employee to be available to the employer for the purpose of undertaking a work-related action and does not require the employee to attend the employer's workplace or be at or near that workplace. Where an employee has taken a rest period which has been interrupted, the employer must compensate the employee by making available to that employee an uninterrupted rest period within 14 days beginning on the day that the employee's rest period was interrupted in addition to any rest period to which the employee would normally be entitled in that 14 day period. Article 10(6) introduces a power for the States to amend Article 10 by Regulations.

*Article 3* introduces new Part 3A – flexible working – comprising Articles 15A to 15F.

Article 15A(1) sets out the right for a qualifying employee to apply to his or her employer for a change in his or her terms and conditions of employment if the change relates to the hours, times or place the employee is required to work and if the purpose of the change is to enable the employee to provide care for another person. Article 15A(2) sets out the information that must be given in an application. An employee is a qualifying employee if he or she has been continuously employed by his or her employer for a period of not less than 15 months on the date that he or she makes the application. An employee may not make a further application where he or she has made an application in the previous 12 months.

Article 15B describes the procedure for considering an application, including the requirement to hold a meeting to discuss the application with the employee and the time limits for holding the meeting. The decision must usually be made within 6 weeks after the day on which the application is made and must be in writing. Article 15B(5) sets out the grounds upon which an application may be refused.

Article 15C enables an employee to appeal against his or her employer's decision to refuse an application, or the terms upon which the employer has granted the application, and sets out the procedural arrangements and time limits within which an appeal must be decided. By Article 15C(6) the employee has the same rights to be represented as are conferred on an employee under Article 78A of the principal Law when attending a disciplinary or grievance hearing, and the same rights to complain to a tribunal where his or her employer has failed to comply with Article 78A.

Article 15D provides that, unless the contrary is proved, an application under Article 15A is taken as having been made on the day the application is received by the employer. It also permits an employer and an employee to agree to an extension of any of the periods referred to in Part 3A, and requires every notice or agreement given under Part 3A to be in writing.

Article 15E provides that an employee who makes an application under Article 15A may present a complaint to the Tribunal that his or her employer has failed in relation to the application to comply with any requirement in Article 15B, 15C or 15D(3), or that a decision by his or her employer to refuse the application was based on incorrect facts, and sets out the procedural requirements that apply for presenting such a complaint.

Article 15F gives the Tribunal power to make an order for reconsideration of the application and for the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.

*Article 4* amends Article 31 of the principal Law so as to provide that an employee has the right not to be subjected to any detriment, by an act or failure to act on the part of his or her employer, on the ground that the employee was taking or proposing to take any action to enforce or secure the benefit of a right conferred under Part 3A or 5A of the principal law. Article 31 is also amended so that it does not apply where the detriment in question amounts to dismissal.

*Article 5* amends Article 33 of the principal Law so as to limit the amount of compensation payable in respect of an act or failure to act that subjects an employee to a detriment to an amount not exceeding 4 weeks' pay.

*Article 6* introduces new Part 5A into the principal Law, comprising Articles 55A to 55T in 6 chapters, which contain the new rights mentioned in paragraphs (b) to (g) at the beginning of this Explanatory Note.

Chapter 1 of Part 5A (Article 55A) sets out the definitions used in Part 5A. Article 55A(3) also enables the States to amend by Regulations any of the definitions in Article 55A or any of the periods described in Part 5A. It also enables the States to amend Part 5A so as to provide for a right described in this Part to apply with or without modification to other persons or classes of persons.

Chapter 2 of Part 5A (Articles 55B and 55C) sets out an employee's rights in relation to the taking of time off for ante-natal care. Article 55B entitles an employee who is pregnant to be permitted by her employer to take time off during the employee's normal working hours in order to attend an appointment for the purpose of receiving ante-natal care on the advice of a registered medical practitioner, registered midwife or registered nurse. If her employer requests her to do so, she must produce for her employer's inspection a certificate stating that the employee is pregnant and an appointment card or some other document showing that the appointment has been made. (Such documentation is not required in respect of an employee's first appointment.) An employer is not required to permit an employee to take time off to attend ante-natal classes to prepare the mother for motherhood.

Article 55C provides for an employee who is entitled to take time off under Article 55B to be paid remuneration by her employer for the period of absence at the appropriate hourly rate, and provides for the method of calculation of the hourly rate, which is calculated in accordance with Schedule 1 (as amended by this Law).

Chapter 3 of Part 5A (Articles 55D to 55J) sets out an employee's rights in relation to the taking of maternity leave.

By Article 55D(1) an employer must not permit an employee to work during the employee's compulsory maternity leave period. However, an employee who is not permitted to work under paragraph (1), but who would normally have been required to do so during that period under her contract of employment is entitled to be paid remuneration by her employer amounting to 2 weeks' pay at the appropriate hourly rate. She is also entitled, during the compulsory maternity leave period, to the benefit of all of the terms and conditions of employment which would have applied had she not been absent, and is bound, during that period, by any obligations arising under those terms and conditions (subject only to the exceptions in Part 5A).

Article 55D(3) sets out the method for calculating the appropriate weekly rate, which is calculated in accordance with Schedule 1 (as amended by this Law).

The right to compulsory maternity leave in Article 55D applies in relation to any employee, no matter how long she has been employed by her employer.

By Article 55E(1) an employee is entitled to ordinary maternity leave (in addition to compulsory maternity leave) provided that –

- (a) no later than the end of the 15th week before her expected week of childbirth, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of her pregnancy, the expected week of childbirth and the date on which she intends her ordinary maternity leave period to start; and
- (b) if requested to do so by her employer, she produces for her employer's inspection a certificate from a registered medical practitioner, a registered midwife, or a registered nurse stating the expected week of childbirth.

By Article 55E(2), if the employee is entitled to ordinary maternity leave and has worked for her employer for a period of less than 15 months ending with the beginning of the expected week of childbirth, she will be entitled to a total of 6 weeks' ordinary maternity leave (in addition to 2 weeks' compulsory maternity leave).

By Article 55E(3), if the employee is entitled to ordinary maternity leave and has worked for her employer for a period of 15 months or more ending with the beginning of the expected week of childbirth, she will be entitled to a total of 16 weeks' ordinary maternity leave (in addition to 2 weeks' compulsory maternity leave).

Article 55E(4) permits an employee to vary the date on which she intends her ordinary maternity leave period to start within specified time limits, and Article 55E(5) requires notices to be given in writing. An employee may not specify a date earlier than the beginning of the 11th week before the expected week of childbirth except that, in a case where the employee is entitled to a total of 6 weeks' ordinary maternity leave, she must not specify a date that is earlier than the beginning of the 6th week before the expected week of childbirth.

Article 55E(6) makes it clear that an employee's entitlement to ordinary maternity leave is not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy. (The same applies in relation to adoption leave, where a person adopts more than one child, and in relation to parental leave.)

Article 55F provides for the commencement of an employee's ordinary maternity leave period and the notice an employer has to give as to when that leave period ends. Article 55F(3) enables the States to specify by Regulations when an employee's ordinary maternity leave period may or must commence in circumstances other than those described in Article 55F or specify when a compulsory maternity leave period must or may be extended. By Article 55F(4) an employee's ordinary maternity leave period must be taken for a continuous period from its commencement and may not cease earlier than the date that the employee's compulsory leave period commences.

Article 55G provides that an employee who takes ordinary maternity leave is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment, except terms and conditions about remuneration, which would have applied if she had not been absent, and is bound by any obligations arising under those terms and conditions, subject only to the exceptions in Part 5A. Article 55G(2) makes it clear that wages, salary or commission for work done by the employee or any bonus for achievements of the employee which are attributable to any period prior to the employee beginning her ordinary maternity leave remain payable to her.

Article 55H requires an employee who intends to return to work earlier than the end of her ordinary maternity leave period to give to her employer not less than 4 weeks' notice of the date on which she intends to return. Article 55H sets out the procedures to be followed if an employee intends to return to work earlier than previously notified.

Article 55I permits an employee to carry out work for her employer during her ordinary maternity leave period without bringing her ordinary maternity leave to an end. Reasonable contact from time to time between an employee and her employer does not constitute work, and such contact does not bring the ordinary maternity leave period to an end.

By Article 55J an employee who returns to work immediately after a period of compulsory maternity leave or ordinary maternity leave is entitled to return to the job in which she was employed immediately before her absence. In particular she has the right to return with her seniority, pension rights and similar rights as they would have been if she had not been absent and on terms and conditions not less favourable than those which would have applied if she had not been absent.

Chapter 4 of Part 5A (Articles 55K to 55M) sets out an employee's rights in relation to the taking of adoption leave. These follow as closely as possible the provisions relating to the taking of ordinary maternity leave.

By Article 55K an employee is entitled to adoption leave in respect of a child provided the employee is the child's adopter; has notified the approved adoption society that he or she agrees that the child should be placed with him or her and has agreed the date of placement or, in the case of an overseas adoption, has received an official notification; and notified his or her employer of his or her intention to take adoption leave. The notice must specify the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey, and the date on which the employee has chosen that his or her period of leave should begin.

Article 55K provides for the giving of notice by the employee to his or her employer no more than 7 days after the date on which the employee receives official notification of having been matched with the child for the purposes of adoption or, in the case of an overseas adoption, no more than 7 days after the employee receives notice of the date the child is expected to arrive in Jersey. In a case where it was not reasonably practicable for the employee to give such notice, he or she must do so as soon as is

reasonably practicable. Where the employer so requests, an employee must also provide his or her employer with evidence of the information he or she has supplied to the employer about the proposed adoption.

By Article 55K(4) an employee who is entitled to adoption leave and who has worked for his or her employer for a period of less than 15 months ending with the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey, will be entitled to total of 8 weeks' adoption leave.

By Article 55K(5) an employee who is entitled to adoption leave and who has worked for his or her employer for a period of 15 months or more ending with the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey, will be entitled to total of 18 weeks' adoption leave.

Article 55K(6) permits an employee to vary the date he or she has chosen as the date on which his or her period of adoption leave will begin.

Article 55L provides that an employee may choose to begin a period of adoption leave on the date on which the child is placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child enters Jersey, or he or she may choose a predetermined date which is no more than 14 days before the date on which the child is expected to be placed with the employee or, in the case of an overseas adoption, no more than 14 days before the child is expected to enter Jersey, and no later than the date on which the child is so placed or so enters.

Article 55L provides for the commencement of an employee's adoption leave period and the notice an employer has to give as to when that leave period ends. By Article 55L(6) an employee's adoption leave period must be taken for a continuous period from its commencement.

By Article 55M the rights of an employee that are set out in Articles 55G, 55H, 55I(1), (2), (3), (4), (6) and (7) and 55J apply to an employee who takes adoption leave in the same way as if the employee had taken maternity leave.

Chapter 5 of Part 5A (Articles 55N to 55Q) sets out an employee's rights in relation to the taking of parental leave upon birth or adoption.

By Article 55N an employee is entitled to 2 weeks unpaid parental leave for the purpose of caring for a child or supporting the child's mother or adopter if the employee –

- (a) has complied with the notice requirements in Article 55P and, where applicable, the evidential requirements in that Article;
- (b) is either the father of the child or is married to, the civil partner of, or the partner of, the child's mother or adopter, but not the child's father or adopter; and
- (c) has, or expects to have responsibility for the upbringing of the child, or the main responsibility (apart from any responsibility of the mother or adopter) for the upbringing of the child.

Article 55O sets out when an employee may choose to begin his or her period of parental leave. By Article 55O, in the absence of any agreement between the employer and employee, an employee may choose to take the 2 weeks unpaid parental leave to which he or she is entitled either as 2 separate weeks' parental leave or 2 consecutive weeks' parental leave in respect of a child. The parental leave may only be taken during the period which begins with the day on which the child is born or adopted and

ends 8 weeks after that day or, in a case where the child is born or adopted before the first day of the expected week of its birth or adoption, 8 weeks after that day.

Article 55P(1) requires an employee to give his or her employer notice of his or her intention to take parental leave in respect of a child. The notice must specify the expected week childbirth or adoption, the length of the period of leave that the employee has chosen to take and the date on which the employee has chosen to begin his or her leave period or periods. Article 55P sets out the procedural requirements for the giving of notices and the varying of the notices.

Article 55Q states when an employee's period of parental leave begins.

Chapter 6 of Part 5A (Articles 55R, 55S and 55T) sets out supplementary provisions in respect an employee's contractual rights to maternity leave, adoption leave or parental leave, the right to make a complaint to the Tribunal and the Tribunal's remedies.

Article 55R makes clear that where an employee is entitled to maternity leave, adoption leave or parental leave under his or her contract of employment or otherwise as well as under Part 5A, the employee may not exercise both the right under his or her contract and the right under Part 5A but may, in taking the leave, take advantage of whichever right is, in any particular respect, the more favourable.

Article 55S gives the employee the right to present a complaint to the Tribunal that his or her employer has failed, or threatened to fail, to comply with any of Part 5A, and sets the time limits for making any such complaint. The States may amend Article 55S by Regulations.

Article 55T gives the Tribunal power to order the employer to pay the whole or any part of any amount to which the employee is entitled under Part 5A and order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay. By Article 55T(2) the States may amend Article 55T by Regulations.

*Article 7* amends Article 56 of the principal Law so as to insert a missing word. It also amends the notice period that an employee must give before terminating his or her employment, so that now the notice required to be given by an employee who has been continuously employed for one week or more shall be not less than 1 week's notice if his or her period of continuous employment is 1 week or more but less than 26 weeks; 2 weeks' notice if his or her period of continuous employment is 26 weeks or more but less than 5 years; and 4 weeks' notice if his or her period of continuous employment is 5 years or more.

*Article 8* amends Article 60C of the principal Law so that for the purposes of that Article (which provides that the amount of redundancy payment is to be calculated by allowing one week's pay for each year of employment) one week's pay is to be calculated in accordance with Schedule 1 but shall not exceed the most recent figure for the mean average weekly earnings published by the Statistics Unit of the States of Jersey at least one month before the effective date of termination (disregarding any more recent figure published less than a month before the effective date of termination). The Minister may, by Order, amend the Article so as to specify the amount or a different formula for calculating one week's pay for the purposes of that Article.

*Article 9* amends Article 60CA(2) of the principal Law so that a redundancy payment is to be treated as having been paid (and so breaks continuous employment) when the employee was entitled to receive the redundancy pay component of insolvency benefit under Article 26C of the Social Security (Jersey) Law 1974 relating to his or her employment.

*Article 10* substitutes Article 67 of the principal Law so as to provide that an employee who is dismissed is to be regarded for the purposes of Part 7 of the principal Law (concerning the right not to be unfairly dismissed) as unfairly dismissed if the reason is connected with –

- (a) the pregnancy of the employee;
- (b) the fact that the employee has given birth or adopted a child;
- (c) the fact that the employee took or sought to take, time off under Part 3A or Chapter 2, 3, 4 or 5 of Part 5A;
- (d) the fact that the employee has not carried out work for her employer during her maternity leave period or during his or her adoption leave period, or made contact with his or her employer during that period; or
- (e) the fact that the employee sought to take or avail himself or herself of any of the benefits of maternity leave, adoption leave or parental leave or the terms of his or her employment preserved under Part 5A.

Article 67 also provides that an employee who is dismissed shall also be regarded for the purposes of Part 7 of the principal Law as unfairly dismissed if he or she is made redundant but it can be shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer and it is shown that the reason for which the employee was selected for dismissal was a reason connected with any of the reasons referred to in paragraph (a), (b), (c), (d) or (e) above. Article 67 sets out circumstances when an employee would not be regarded as unfairly dismissed and it is for the employer to show that the provisions in question were satisfied in relation to the complainant. The States may by Regulations amend the reasons or circumstances in which an employee is to be regarded as unfairly dismissed.

*Article 11* makes a minor correction to Article 77B(4)(b) of the principal Law.

*Article 12* adds to Article 104 of the principal Law a power to amend Part 3A by Regulations. It also gives the States power to amend the Law in respect of the minimum hours of work that an employee is contracted to work per week for certain purposes.

*Article 13* amends Schedule 1 to the principal Law (which defines a weekly rate of pay) by adding paragraph 9 so as to provide that, in the case of an employee who is entitled to take time off under Article 55B or required to take compulsory maternity leave under Article 55D, the Schedule is modified so that the weekly rate is calculated by reference to 12 weeks instead of 52 weeks. Paragraph 5 of Schedule 1 is also substituted so as to make provision for the calculation date applicable where an employee is taking time off for ante-natal care, or taking compulsory maternity leave and for the calculation of other awards under the principal Law.

*Article 14* provides that this Law may be cited as the Employment (Amendment No. 8) (Jersey) Law 201- and that it will come into force on such day or days as the States may by Act appoint.





Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 8) (JERSEY) LAW 201-**

### **Arrangement**

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Jersey

## DRAFT EMPLOYMENT (AMENDMENT No. 8) (JERSEY) LAW 201-

A **LAW** to amend further the Employment (Jersey) Law 2003

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

### 1 Interpretation

In this Law the “principal Law” means the Employment (Jersey) Law 2003<sup>1</sup>.

### 2 Article 10 amended

In Article 10 of the principal Law –

(a) After paragraph (2) there shall be inserted the following paragraphs –

“(2A) For the purposes of paragraphs (1) and (2), a rest period shall be an uninterrupted rest period if the employer –

- (a) does not require the employee to be available to the employer for the purpose of undertaking a work-related action; and
- (b) does not require the employee to attend the employer’s workplace or be at or near that workplace.

(2B) Where an employee has taken a rest period which has been interrupted, the employer shall compensate the employee by making available to that employee an uninterrupted rest day within 14 days beginning on the day that the employee’s rest day was interrupted, in addition to any rest day to which the employee would normally be entitled in that 14 day period.”; and

(b) for paragraph (6) there shall be substituted the following paragraph –

“(6) The States may amend this Article by Regulations.”.

**3 New Part 3A inserted**

After Part 3 of the principal Law there shall be inserted the following Part –

**“PART 3A**  
**FLEXIBLE WORKING**

**15A Entitlement to request change in the terms and conditions of employment**

- (1) A qualifying employee may apply to his or her employer for a change in his or her terms and conditions of employment if the change relates to –
  - (a) the hours the employee is required to work;
  - (b) the times when the employee is required to work; or
  - (c) the place where the employee is required to work,and the reason for the change is to enable the employee to provide care for another person.
- (2) An application under this Article must –
  - (a) state that it is such an application;
  - (b) specify the change applied for and the date on which it is proposed the change should become effective;
  - (c) state whether the employee will be employed by the person in respect of whom he or she will provide care, or receive any remuneration in return for providing care to the person; and
  - (d) state the reason for making the application.
- (3) For the purpose of this Part ‘remuneration’ includes any payment or reward for services rendered except a payment made or benefit granted to the employee under the Social Security (Jersey) Law 1974<sup>2</sup> or Income Support (Jersey) Law 2007<sup>3</sup>.
- (4) For the purposes of this Article –
  - (a) an employee is a qualifying employee if he or she has been continuously employed by his or her employer for a period of not less than 15 months on the date that he or she makes the application; and
  - (b) the provisions of Article 57 shall not apply in computing the period of employment and instead the period of employment shall be computed in accordance with Article 60B(2) as if computing the period of employment for the purpose of determining whether a person has a right to a redundancy payment.
- (5) An employee may not make a further application under paragraph (1) where he or she has made such an application in the previous 12 months.

**15B Employer's duties in relation to application under Article 15A**

- (1) Subject to paragraphs (2) and (6), an employer to whom an application under Article 15A is made –
  - (a) shall hold a meeting, at a time convenient to the employer and employee, to discuss the application with the employee within 28 days after the day on which the application is made;
  - (b) may agree the change in the terms or conditions applied for under Article 15A or agree different terms and conditions of the employee's employment to those applied for; and
  - (c) shall give the employee notice of his or her decision on the application within 6 weeks after the day on which the application is made.
- (2) Paragraph (1) does not apply where the employer agrees to the application and gives notice of his or her decision to the employee within 28 days after the day on which the application is made.
- (3) Where the employer's decision is to agree to a change in the terms and conditions of the employee's employment, the notice shall specify the agreed change and state the date on which the change is to take effect.
- (4) Where the employer's decision is to refuse the application the notice shall –
  - (a) state which of the grounds for refusal specified in paragraph (5) are considered by the employer to apply;
  - (b) contain a sufficient explanation as to why those grounds apply in relation to the application; and
  - (c) set out the appeal procedure for which provision is made in Article 15C.
- (5) An employer may only refuse an application made under Article 15A if he or she considers that any of the following grounds are satisfied –
  - (a) the granting of the application would create a burden of additional costs;
  - (b) the application would have a detrimental effect on the employer's ability to meet customer demand;
  - (c) the employer would be unable to re-organize work among existing staff or recruit additional staff;
  - (d) the granting of the application would have a detrimental effect on the quality or performance of the employer's business;
  - (e) there would be insufficient work for the employee to do during the periods the employee proposes to work;
  - (f) the granting of the application would have a detrimental effect on the employer's planned staffing changes; or

- (g) the employee receives, or would receive, remuneration for the care that he or she provides, or would provide, to care for another person.
- (6) Where the individual who would ordinarily consider an application is absent from work on the day on which the application is made, the periods referred to in paragraphs (1) and (2) shall not commence until the day on which the individual returns to work, or 28 days after the day on which the application is made, whichever is the sooner.

### **15C Appeal against employer's decision**

- (1) An employee is entitled to appeal against his or her employer's decision to refuse an application under Article 15A, or the terms upon which the employer has granted the application, by giving notice of appeal to the employer within 14 days after the day on which notice of the decision is given, setting out the grounds of appeal.
- (2) Subject to paragraphs (3) and (5), within 14 days after the employee's notice under paragraph (1) is given, the employer shall hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the appeal.
- (3) Paragraph (2) does not apply where, within 14 days after the day on which notice under paragraph (1) is given, the employer –
  - (a) upholds the appeal; and
  - (b) notifies the employee in writing of his or her decision, specifying any change in the terms and conditions of the employee's employment agreed to and stating the date from which the change in the terms and conditions of the employee's employment is to take effect.
- (4) Where a meeting is held to discuss the appeal, the employer shall notify the employee of his or her decision on the appeal within 14 days after the day of the meeting.
- (5) Where the individual who would ordinarily consider the appeal is absent from work on the day on which the notice of appeal is given, the period referred to in paragraph (2) shall not commence until the day the individual returns to work, or 28 days after the day on which the notice of appeal is given, whichever is the sooner.
- (6) The rights conferred by Article 78A and 78B apply in respect of any meeting held under paragraph (2) as they do in respect of disciplinary and grievance hearings.

### **15D Applications, notices and appeals under Part 3A**

- (1) Unless the contrary is proved, an application under Article 15A is taken as having been made on the day the application is received by the employer.

- (2) An employer and an employee may agree to an extension of any of the periods referred to in this Part.
- (3) Every notice or agreement given under this Part shall be in writing.

#### **15E Complaints to Tribunal**

- (1) An employee who makes an application under Article 15A may present a complaint to the Tribunal –
  - (a) that his or her employer has failed in relation to the application to comply with any requirement in Article 15B, 15C or 15D(3); or
  - (b) that a decision by his or her employer to refuse the application was based on incorrect facts.
- (2) No complaint under this Article may be made in respect of an application which has been disposed of by agreement or withdrawn.
- (3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this Article may be made unless or until the employer –
  - (a) notifies the employee of a decision under Article 15C(3)(b) to reject the application on appeal; or
  - (b) breaches any of the requirements of Articles 15B(1), 15C or 15D(3).
- (4) The Tribunal shall not consider a complaint under this Article unless the complaint is presented –
  - (a) before the end of the period of 8 weeks beginning with the relevant date; or
  - (b) within such further period as the Tribunal considers reasonable in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (5) In paragraph (4)(a), the reference to the relevant date is –
  - (a) in the case of a complaint under paragraph (3)(a), to the date on which the employee is notified of the decision on the appeal; and
  - (b) in the case of a complaint under paragraph (3)(b), to the date on which the breach concerned was committed.

#### **15F Remedies**

Where the Tribunal finds a complaint presented under Article 15E well-founded it shall make a declaration to that effect and may –

- (a) make an order for reconsideration of the application; and
- (b) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.”.

**4 Article 31 amended**

In Article 31 of the principal Law–

(a) in paragraph (3)(a), the word “and” shall be deleted and after paragraph (3)(b) there shall be added the following sub-paragraph –

“(c) any right conferred under Part 3A or 5A, and in particular any right connected with –

- (i) the pregnancy of the employee,
- (ii) the birth or adoption of a child,
- (iii) a change in the hours, times or place of work, or an application to make such a change, under Part 3A,
- (iv) the taking of time off, or the seeking of time off, under Chapter 2, 3, 4 or 5 of Part 5A,
- (v) the employee not carrying out work for her employer during her maternity leave period or during his or her adoption leave period, or making contact with his or her employer during such period, or
- (vi) the employee seeking to take or avail himself or herself of any of the benefits of maternity leave, adoption leave or parental leave or the terms of his or her employment preserved under Part 5A.”;

(b) after paragraph (3) there shall be added the following paragraph –

“(4) This Article shall not apply where the detriment in question amounts to dismissal.”.

**5 Article 33 amended**

In Article 33(1)(b) after the word “complainant” there shall be inserted the words “of an amount not exceeding 4 weeks’ pay, or such amount as may be prescribed.”.

**6 New Part 5A inserted**

After Part 5 of the principal Law there shall be inserted the following Part –



**“PART 5A****MATERNITY, ADOPTION AND PARENTAL RIGHTS****CHAPTER 1****INTERPRETATION****55A Interpretation for the purposes of Part 5A**

(1) For the purposes of this Part –

‘adopter’, in relation to a child, means a person who has been matched with the child for adoption, or, in a case where 2 people have been matched jointly, whichever of them has elected to be the child’s adopter for the purposes of this Part;

‘approved adoption society’ has the meaning given in Article 1 of the Adoption (Jersey) Law 1961<sup>4</sup>;

‘child’ means a person under the age of 18;

‘childbirth’ means the birth of a living child or the birth of a child, whether living or dead, after 24 weeks of pregnancy;

‘compulsory maternity leave period’ means the period of 2 weeks beginning with the day on which childbirth by that employee occurs and ‘compulsory maternity leave’ is the leave taken by that employee during that period;

‘expected week of childbirth’ means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

‘official notification’ means written notification, issued by the Minister for Health and Social Services, that he or she is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and has sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been approved as being a suitable adoptive parent;

‘ordinary maternity leave’ shall be construed in accordance with Article 55E;

‘ordinary maternity leave period’ shall be construed in accordance with Article 55F;

‘overseas adoption’ means the adoption of a child who enters Jersey in connection with or for the purpose of adoption which does not involve the placement of the child for adoption under Jersey law;

‘parental responsibility’ has the meaning given by Article 1 of the Children (Jersey) Law 2002<sup>5</sup>;

‘partner’, in relation to a child’s mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not the mother’s or adopter’s parent, grandparent, sister, brother, aunt or uncle;

‘registered medical practitioner’ has the same meaning as given in the Medical Practitioners (Registration) (Jersey) Law 1960’;

‘registered midwife’ means a person registered as a midwife under the Health Care (Registration) (Jersey) Law 1995’;

‘registered nurse’ means a person registered under the Health Care (Registration) (Jersey) Law 1995 as a nurse;

‘week of childbirth’ means the week, beginning with midnight between Saturday and Sunday, in which childbirth occurs.

- (2) For the purposes of this Part, the provisions of Article 57 shall not apply in computing a period of employment and instead a period of employment shall be computed in accordance with Article 60B(2) as if computing the period of employment for the purpose of determining whether a person has a right to a redundancy payment.
- (3) The States may by Regulations –
  - (a) amend paragraph (1);
  - (b) amend any period referred to in this Part; or
  - (c) amend this Part to provide for a right described in this Part to apply with or without modification to other persons or classes of persons.

## CHAPTER 2

### ANTE-NATAL CARE

#### **55B Right to time off for ante-natal care**

- (1) An employee who –
  - (a) is pregnant; and
  - (b) on the advice of a registered medical practitioner, registered midwife or registered nurse, has made an appointment to attend at any place for the purpose of receiving ante-natal care,is entitled to be permitted by her employer to take time off during the employee’s normal working hours in order to enable her to keep the appointment.
- (2) An employee is not entitled to take time off under this Article to keep an appointment unless, if her employer requests her to do so, she produces for her employer’s inspection –

- (a) a certificate from a registered medical practitioner, registered midwife or registered nurse stating that the employee is pregnant; and
  - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Paragraph (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).
- (4) For the purposes of this Article the normal working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is normally required to work.
- (5) In this Article ante-natal care does not include ante-natal classes to prepare the mother for motherhood.

#### **55C Right to remuneration during time off to receive ante-natal care**

- (1) An employee who is entitled to take time off under Article 55B is entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate, whether or not her employer has permitted her to take the time off.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay, calculated in accordance with Schedule 1, divided by the number of working hours in a week for that employee when employed under the contract of employment in force when the employee takes the time off.
- (3) Where the number of working hours differs from week to week or over a longer period, the amount of one week's pay, shall be divided instead by the average number of working hours, calculated by dividing by 12 the total number of the employee's working hours during the period of 12 weeks ending with the last complete week before the employee takes the time off.
- (4) The right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under that person's contract of employment.
- (5) Any remuneration paid to an employee under her contract of employment in respect of a period of time off under Article 55B goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.

## CHAPTER 3

## MATERNITY LEAVE

**55D Compulsory maternity leave**

- (1) An employer shall not permit an employee to work during the employee's compulsory maternity leave period.
- (2) An employee who is not permitted to work under paragraph (1), but who would normally have been required to do so during that period under her contract of employment –
  - (a) is entitled to be paid remuneration by her employer amounting to 2 weeks' pay at the appropriate weekly rate;
  - (b) is entitled, during the compulsory maternity leave period, to the benefit of all of the terms and conditions of employment which would have applied if she had not been absent; and
  - (c) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exceptions in this Part.
- (3) The appropriate weekly rate, in relation to an employee to whom paragraph (1) applies is the amount of one week's pay, calculated in accordance with Schedule 1.
- (4) Any remuneration paid to an employee under her contract of employment in respect of a compulsory maternity leave period under paragraph (2) goes towards discharging any liability of the employer to pay remuneration under paragraph (2) in respect of that period; and, conversely, any payment of remuneration under paragraph (2) in respect of such a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.
- (5) Any remuneration to be paid by an employer to an employee under paragraph (2) shall be reduced by any amount that the employee receives by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974<sup>8</sup>, or any maternity allowance under Article 22 of that Law, in respect of the compulsory maternity leave period.

**55E Entitlement to ordinary maternity leave**

- (1) An employee is entitled to ordinary maternity leave (in addition to compulsory maternity leave) provided that she satisfies the following conditions –
  - (a) no later than the end of the 15th week before her expected week of childbirth, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of –
    - (i) her pregnancy,

- (ii) the expected week of childbirth, and
- (iii) the date on which she intends her ordinary maternity leave period to start,

and

- (b) if requested to do so by her employer, she produces for her employer's inspection a certificate from –
  - (i) a registered medical practitioner,
  - (ii) a registered midwife, or
  - (iii) a registered nurse,

stating the expected week of childbirth.

(2) An employee who –

- (a) is entitled to ordinary maternity leave; and
- (b) has worked for her employer for a period of less than 15 months ending with the beginning of the expected week of childbirth,

shall be entitled to a total of 6 weeks' ordinary maternity leave (in addition to 2 weeks' compulsory maternity leave).

(3) An employee who –

- (a) is entitled to ordinary maternity leave; and
- (b) has worked for her employer for a period of 15 months or more ending with the beginning of the expected week of childbirth,

shall be entitled to a total of 16 weeks' ordinary maternity leave (in addition to 2 weeks' compulsory maternity leave).

(4) An employee who has notified her employer under paragraph (1)(a)(iii) of the date on which she intends her ordinary maternity leave period to start may subsequently vary that date, provided that she notifies her employer of the change at least –

- (a) 28 days before the date on which she originally intended her ordinary maternity leave to start; or
- (b) 28 days before the new date,

whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable.

(5) Notification under paragraph (1)(a)(iii) or (4) –

- (a) shall be given in writing;
- (b) shall not specify a date earlier than the beginning of the 11th week before the expected week of childbirth; and
- (c) in a case where the employee is entitled to a total of 6 weeks ordinary maternity leave, shall not specify a date that is earlier than the beginning of the 6th week before the expected week of childbirth.

- (6) An employee's entitlement to leave under this Article shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

#### **55F Commencement of ordinary maternity leave**

- (1) An employee's ordinary maternity leave period shall commence –
  - (a) with the day which she notifies to her employer, in accordance with Article 55E, as the day on which she intends her ordinary maternity leave period to start; or
  - (b) if by virtue of the provision for change in that Article she has notified more than one such day, the last day she notifies.
- (2) Where the employee's ordinary maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her ordinary maternity leave period commences on the day which follows the end of her compulsory maternity leave period.
- (3) The States may by Regulations –
  - (a) specify when an employee's ordinary maternity leave period may or must commence in circumstances other than those described in paragraphs (1) and (2); or
  - (b) specify when a compulsory maternity leave period must or may be extended.
- (4) An employee's ordinary maternity leave period –
  - (a) must be taken for a continuous period (except in so far as it may be broken by the taking of compulsory maternity leave) from its commencement; and
  - (b) may not cease earlier than the date that the employee's compulsory leave period commences.
- (5) Where the employee's employment terminates after the commencement of the ordinary maternity leave period but before the time when (apart from this paragraph) that period would end, the ordinary maternity leave period ends at the time of the termination of the employment.
- (6) An employer who is notified under any provision of Article 55E of the day on which an employee's ordinary maternity leave period will commence or has commenced shall notify the employee of the day on which her ordinary maternity leave period shall end.
- (7) The notification provided for in paragraph (6) shall be given to the employee –
  - (a) where the employer is notified under Article 55E(1), within 28 days of the date on which her employer received the notification, and where the employee has notified the employer under Article 55E(4), within 28 days of the last date the employee notifies;

(b) where the employer is notified under paragraph (2), within 28 days of the date on which the employee's compulsory maternity leave period commenced.

(8) An employee may be absent from work at any time during her ordinary maternity leave period.

#### **55G Application of terms and conditions during ordinary maternity leave**

(1) An employee who takes ordinary maternity leave –

(a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment, except terms and conditions about remuneration, which would have applied if she had not been absent; and

(b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exceptions in this Part.

(2) For the purposes of paragraph (1) –

(a) sums which would normally be payable to an employee by way of wages or salary which are attributable to a period during which the employee was on ordinary maternity leave are to be treated as remuneration; and

(b) any wages, salary or commission for work done by the employee, or any bonus for achievements of the employee, which are attributable to any period prior to the employee beginning her ordinary maternity leave are not to be treated as remuneration.

#### **55H Requirement to notify intention to return during ordinary maternity leave period**

(1) An employee who intends to return to work earlier than the end of her ordinary maternity leave period shall give to her employer not less than 4 weeks' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of her ordinary maternity leave period without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that the employer has 4 weeks' notice of her return.

(3) An employee who complies with her obligations in paragraph (1) or whose employer has postponed her return in the circumstances described in paragraph (2), and who then decides to return to work –

(a) earlier than the original return date, must give her employer not less than 4 weeks' notice of the date on which she now intends to return;

- (b) later than the original return date, must give her employer not less than 4 weeks' notice ending with the original return date.
- (4) In paragraph (3) the 'original return date' means the date which the employee notified to her employer as the date of her return to work under paragraph (1), or the date to which her return was postponed by her employer under paragraph (2).
- (5) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of the ordinary maternity leave period.
- (6) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.
- (7) This Article does not apply in a case where the employer did not notify the employee in accordance with Article 55F(6) of the date on which her ordinary maternity leave period would end.

#### **55I Work during ordinary maternity leave period**

- (1) Subject to paragraph (5), an employee may carry out work for her employer during her ordinary maternity leave period without bringing her ordinary maternity leave to an end.
- (2) For the purposes of this Article, any work carried out on any day shall constitute a day's work.
- (3) Subject to paragraph (4), for the purposes of this Article, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.
- (4) Reasonable contact from time to time between an employee and her employer which either party is entitled to make during a compulsory maternity leave period or ordinary maternity leave period (for example to discuss an employee's return to work) –
  - (a) shall not constitute work; and
  - (b) shall not bring that period to an end.
- (5) Paragraph (1) shall not permit any work to be carried out by the employee at any time from childbirth to the end of the period of 2 weeks commencing with the day on which childbirth occurs.
- (6) This Article does not confer any right on an employer to require that any work be carried out during the employee's ordinary maternity leave period.
- (7) Any days' work carried out under this Article shall not have the effect of extending the total duration of the ordinary maternity leave period.



**55J Right to return after maternity leave**

- (1) An employee who returns to work immediately after a period of compulsory maternity leave or ordinary maternity leave is entitled to return to the job in which she was employed immediately before her absence.
- (2) An employee's right to return is a right to return –
  - (a) with her seniority, pension rights and similar rights as they would have been if she had not been absent; and
  - (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

## CHAPTER 4

## ADOPTION LEAVE

**55K Entitlement to adoption leave**

- (1) An employee is entitled to adoption leave in respect of a child provided the employee –
  - (a) is the child's adopter; and
  - (b) has either notified the approved adoption society that he or she agrees that the child should be placed with him or her and has agreed the date of placement or, in the case of an overseas adoption, has received an official notification; and
  - (c) has given his or her employer notice of his or her intention to take adoption leave in respect of a child, specifying –
    - (i) the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey, and
    - (ii) the date on which the employee has chosen that his or her period of leave should begin.
- (2) The notice provided for in paragraph (1)(c) must be given to the employer –
  - (a) no more than 7 days after the date on which the employee receives official notification of having been matched with the child for the purposes of adoption or, in the case of an overseas adoption, no more than 7 days after the employee receives notice of the date the child is expected to enter Jersey; or
  - (b) in a case where it was not reasonably practicable for the employee to give notice in accordance with subparagraph (a), as soon as is reasonably practicable.

- (3) Where the employer so requests, an employee must also provide his or her employer with evidence of the information notified to his or her employee under paragraph (1)(c)(i).
- (4) An employee who –
- (a) is entitled to adoption leave; and
  - (b) has worked for his or her employer for a period of less than 15 months ending with the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey,
- shall be entitled to total of 8 weeks' adoption leave.
- (5) An employee who –
- (a) is entitled to adoption leave; and
  - (b) has worked for his or her employer for a period of 15 months or more ending with the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey,
- shall be entitled to total of 18 weeks' adoption leave.
- (6) An employee who has given notice under paragraph (1)(c) may vary the date he or she has chosen as the date on which his or her period of leave will begin, subject to paragraph (7) and provided that the employee gives his or her employer notice of the change –
- (a) where the change is to provide for the employee's period of leave to begin on the date on which the child is placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child will enter Jersey, at least 28 days before the date specified in his or her notice under paragraph (1) as the date on which the child is expected to be placed with him or her or expected to enter Jersey, as the case may be;
  - (b) where the change is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,
- or, if it is not reasonably practicable to give the notice 28 days before whichever date is relevant, as soon as is reasonably practicable.
- (7) In a case where paragraph (6) applies, an employee may only vary the date which he or she has chosen as the date on which his or her period of leave will begin by substituting a different predetermined date.
- (8) Notice under paragraph (1) or (6) shall be given in writing.
- (9) An employee's entitlement to leave under this Article shall not be affected by the placement for adoption of more than one child as part of the same arrangement or, in the case of an overseas

adoption, by more than one child being adopted as part of the same arrangement.

#### **55L Commencement of adoption leave**

- (1) An employee may choose to begin a period of adoption leave on –
  - (a) the date on which the child is placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child enters Jersey; or
  - (b) a predetermined date, specified in a notice under Article 55K, which is –
    - (i) no more than 14 days before the date on which the child is expected to be placed with the employee, or
    - (ii) in the case of an overseas adoption, no more than 14 days before the child is expected to enter Jersey, and no later than the date the child is so placed or so enters.
- (2) Except in the case referred to in paragraph (3), an employee's adoption leave period begins on the date specified in his or her notice under Article 55K(1)(c), or, where he or she has varied his or her choice of date under Article 55K(6), on the date specified in his or her notice under that provision (or the last such date if he or she has varied his or her choice more than once).
- (3) In a case where –
  - (a) the employee has chosen to begin his or her adoption leave period on the date on which the child is placed with him or her or the date that the child enters Jersey, as the case may be; and
  - (b) he or she is at work on that date,the employee's adoption leave period begins on the day after that date.
- (4) An employer who is given notice under Article 55K(1) or (6) of the date on which an employee has chosen that his or her adoption leave period should begin shall notify the employee, within 28 days of his or her receipt of the notice, of the date on which the adoption leave period to which the employee will be entitled ends.
- (5) The notification provided for in paragraph (4) shall be given to the employee –
  - (a) where the employer is given notice under Article 55K(1)(c), within 28 days of the date on which he or she received that notice; and
  - (b) if, by virtue of Article 55K the employee has notified more than one such date, within 28 days of the last date the employee notifies.
- (6) An employee's adoption leave period must be taken for a continuous period from its commencement.

- (7) Where the employee's employment terminates after the commencement of the adoption leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the termination of the employment.
- (8) An employee may be absent from work at any time during his or her adoption leave period.

#### **55M Arrangements during adoption leave**

Articles 55G, 55H, 55I(1), (2), (3), (4), (6) and (7) and 55J shall apply to an employee who takes adoption leave in the same way as if the employee had taken ordinary maternity leave.

### CHAPTER 5

#### PARENTAL LEAVE UPON BIRTH OR ADOPTION

#### **55N Entitlement to parental leave upon birth or adoption**

- (1) An employee is entitled to a total of 2 weeks' unpaid parental leave for the purpose of caring for a child or supporting the child's mother or adopter if the employee –
  - (a) satisfies the conditions specified in paragraph (2); and
  - (b) has complied with the notice requirements in Article 55P and, where applicable, the evidential requirements in that Article.
- (2) The conditions referred to in paragraph (1) are that the employee –
  - (a) is either –
    - (i) the father of the child, or
    - (ii) married to, the civil partner of, or the partner of, the child's mother or adopter, but not the child's father or adopter; and
  - (b) has, or expects to have responsibility for the upbringing of the child, or the main responsibility (apart from any responsibility of the mother or adopter) for the upbringing of the child.
- (3) An employee shall be treated as having satisfied the condition in paragraph (2)(a)(ii) if the employee would have satisfied it but for the fact that the child's mother or adopter has died.
- (4) An employee shall be treated as having satisfied the condition in paragraph (2)(b) if the employee would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.

- (5) An employee's entitlement to parental leave under this Article shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.
- (6) An employee's entitlement to parental leave under this Article shall not be affected by the placement for adoption of more than one child as part of the same arrangement or, in the case of an overseas adoption, by more than one child being adopted by the same arrangement.

#### **55O Options in respect of parental leave upon birth or adoption**

- (1) In the absence of any relevant agreement between the employer and employee, an employee may choose to take the 2 weeks' unpaid parental leave to which he or she is entitled under Article 55N either as 2 separate weeks leave or 2 consecutive weeks' leave in respect of a child.
- (2) The parental leave may only be taken during the period which begins with the day on which the child is born or placed for adoption, or in the case of an overseas adoption, the date on which the child enters Jersey, and ends –
  - (a) except in the case referred to in sub-paragraph (b), 8 weeks after that day; or
  - (b) in a case where the child is born or adopted before the first day of the expected week of its birth or adoption, 8 weeks after that day.
- (3) Subject to paragraph (2), an employee may choose to begin his or her period of parental leave on –
  - (a) the day on which the child is born or adopted;
  - (b) the day falling such number of days after the date on which the child is born or adopted as the employee may specify in a notice under Article 55P; or
  - (c) a predetermined date, specified in a notice under Article 55P, which is later than the first day of the expected week of childbirth or adoption.

#### **55P Notice and evidential requirements for parental leave upon birth or adoption**

- (1) An employee must give his or her employer notice of his or her intention to take parental leave in respect of a child, specifying –
  - (a) the expected week of childbirth or adoption;
  - (b) the period of leave that, in accordance with Article 55O(1), the employee has chosen to take; and
  - (c) the date on which, in accordance with Article 55O(3), the employee has chosen that his or her period or periods of leave should begin.

- (2) The notice provided for in paragraph (1) must be given to the employer –
- (a) in the case where the employee is taking parental leave following the birth of a child, no later than the end of the 15th week before the expected week of childbirth;
  - (b) in the case where the employee is taking parental leave following the adoption of a child, no more than 7 days after the date on which the adopter receives official notification of the adopter having been matched with the child for the purposes of adoption or, in the case of an overseas adoption, no more than 7 days after the employee receives notice of the date that the child is expected to enter Jersey; or
  - (c) in a case where it was not reasonably practicable for the employee to give the notice in accordance with subparagraph (a) or (b), as the case may be, as soon as is reasonably practicable.
- (3) Where the employer so requests, an employee must –
- (a) give his or her employer a declaration, signed by the employee, to the effect that the purpose of his or her absence from work will be that specified in Article 55N(1) and that he or she satisfies the conditions of entitlement in Article 55N(2)(a) and (b);
  - (b) give his or her employer evidence of the information notified to his or her employer under paragraph (1)(a).
- (4) An employee who has given notice under paragraph (1) may vary the date he or she has chosen as the date on which his or her period of parental leave will begin, subject to paragraph (5) and provided that the employee gives his or her employer notice of the change –
- (a) where the change is to provide for the employee's period of leave to begin on the date on which the child is born or adopted, at least 28 days before the first day of the expected week of childbirth or adoption;
  - (b) where the change is to provide for the employee's period of leave to begin on a date that is a specified number of days (or a different specified number of days) after the date on which the child is born or adopted, at least 28 days before the date falling that specified number of days after the first day of the expected week of childbirth or adoption;
  - (c) where the change is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,
- or, if it is not reasonably practicable to give the notice at least 28 days before whichever day or date is relevant, as soon as is reasonably practicable.
- (5) In a case where –
- (a) the employee has chosen to begin his or her period of parental leave on a predetermined date; and

(b) the child is not born or adopted on or before that date, the employee must vary his or her choice of date, by substituting a later predetermined date exercising an option under paragraph (4), and give his or her employer notice of the change as soon as is reasonably practicable.

- (6) An employee must give his or her employer a further notice, as soon as is reasonably practicable after childbirth or adoption, of the date on which the child was born or adopted.
- (7) Notice under paragraph (1), (4), (5) or (6) shall be given in writing.

### **55Q Commencement of parental leave for birth or adoption**

- (1) Except in the case referred to in paragraph (2), an employee's period of parental leave under Article 55O begins on the date specified in his or her notice under Article 55P(1), or, where the employee has varied his or her choice of date under Article 55P(4) or (5), on the date specified in his or her notice under that provision (or the last such notice if he or she has varied his or her choice more than once).
- (2) In a case where –
- (a) the employee has chosen to begin his or her period of parental leave on the date on which the child is born or adopted; and
- (b) he or she is at work on that date,
- the employee's period of parental leave begins on the day after that date.
- (3) Where the employee's employment terminates after the commencement of the parental leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the termination of the employment.
- (4) An employee may be absent from work at any time during his or her parental leave period.

## CHAPTER 6

### CONTRACTUAL RIGHTS AND ACCESS TO TRIBUNAL

### **55R Contractual rights to ante-natal care, maternity leave, adoption leave or parental leave**

- (1) This Article applies where an employee –
- (a) is entitled to time off under this Part for the purpose of being given ante-natal care, or to maternity leave, adoption leave or parental leave; and

- (b) has a right which corresponds to that entitlement and which arises under the employee's contract of employment or otherwise.
- (2) In a case where this Article applies –
- (a) the employee may not exercise both the entitlement under this Part and the corresponding right under the employee's contract of employment but may, in taking the leave for which the right and entitlement provide, take advantage of whichever provision is, in any particular respect, the more favourable; and
  - (b) the provisions relating to the entitlements under this Part apply, subject to any modifications necessary to give effect to any more favourable contractual terms or any more favourable rights to be exercised by the employee as a result of the advantage taken under sub-paragraph (a).

### **55S Complaints to Tribunal for breach of requirement under Part 5A**

- (1) An employee may present a complaint to the Tribunal that his or her employer has contravened any requirement under Part 5A.
- (2) No complaint under this Article may be made in respect of a matter which has been settled by agreement or withdrawn.
- (3) The Tribunal shall not consider a complaint under this Article unless it is presented –
  - (a) before the end of the period of 8 weeks beginning with the relevant date; or
  - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (4) In paragraph (3)(a), the reference to the relevant date is –
  - (a) in the case of an alleged contravention of Article 55B(1), the date of the ante-natal appointment;
  - (b) in the case of an alleged contravention of Article 55C(1) or 55D(2) or (3), the date that is 28 days after the date that the employee would normally expect to receive her remuneration for the period during which she was absent;
  - (c) in the case of an alleged contravention of Article 55D(1), the date that is the day after the end of the employee's compulsory maternity leave period;
  - (d) in the case of an alleged contravention of Article 55E(1), (2) or (3), 55F(1), (4) or (6), 55G, 55I or 55J, the date that is the day after the end of the employee's ordinary maternity leave period; or
  - (e) in the case of an alleged contravention of Article 55G, 55I, 55J or 55K(1), (2), (3), (4), (5) or (6), where an employee is complaining of a contravention of those rights connected



- with his or her adoption of a child, the date that is the day after the end of the employee's adoption leave period;
- (f) in the case of an alleged contravention of Article 55N(1), 55O, 55P or 55Q, the date that is the day after the period of 8 weeks immediately following the birth of the child or the date of adoption, as the case may be.

- (5) The right to present a complaint under this Article is without prejudice to any other right conferred on an employee under this Law.
- (6) The States may amend this Article by Regulations.

#### **55T Remedies for breach of Part 5A**

- (1) Where the Tribunal finds a complaint under Article 55S well-founded it shall make a declaration to that effect and may –
  - (a) order the employer to pay the whole or any part of any amount to which the employee is entitled under Article 55C or 55D(2) or (3); and
  - (b) order the employer to pay compensation to the employee in respect of each contravention, of an amount not exceeding 4 weeks' pay.
- (2) The States may amend paragraph (1) by Regulations.”.

#### **7 Article 56 amended**

In Article 56 of the principal Law –

- (a) in paragraph (1)(e), after the words “5 years or” there shall be inserted the word “more”;
- (b) for paragraph (2) there shall be substituted the following paragraph –
  - “(2) The notice required to be given by an employee who has been continuously employed for one week or more shall be not less than –
    - (a) 1 week's notice if his or her period of continuous employment is more than 1 week but less than 26 weeks;
    - (b) 2 weeks' notice if his or her period of continuous employment is 26 weeks or more but less than 5 years; or
    - (c) 4 weeks' notice if his or her period of continuous employment is 5 years or more.”.

#### **8 Article 60C amended**

For Article 60C(3) and (4) of the principal Law there shall be substituted the following paragraphs –

- “(3) For the purposes of paragraph (1), the amount of one week's pay shall be calculated in accordance with Schedule 1 but shall not

exceed the most recent figure for the mean average weekly earnings published by the Statistics Unit of the States of Jersey at least one month before the effective date of termination (disregarding any more recent figure published less than a month before the effective date of termination).

- (4) The Minister may, by Order, amend paragraph (3) to specify the amount or a different formula for calculating one week's pay."

## 9 Article 60CA amended

In Article 60CA(2) of the principal Law –

- (a) in sub-paragraph (a) the word "or" shall be deleted;
- (b) in sub-paragraph (b) for the words "that part." there shall be substituted the words –
- "that part; or
- (c) the employee was entitled to receive the redundancy pay component of insolvency benefit under Article 26C of the Social Security (Jersey) Law 1974<sup>9</sup> relating to his or her employment (whether or not the employee received any redundancy pay to which he or she was entitled)."

## 10 Article 67 substituted

For Article 67 of the principal Law there shall be substituted the following Article –

### "67 Dismissal for family or other reasons

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason is connected with –
- (a) the pregnancy of the employee;
- (b) the fact that the employee has given birth to or adopted a child;
- (c) the fact that an employee changed or sought to change his or her hours, times or place of work under Part 3A;
- (d) the fact that the employee took, or sought to take, time off under Chapter 2, 3, 4 or 5 of Part 5A;
- (e) the fact that the employee has not carried out work for her employer during her maternity leave period or during his or her adoption leave period, or made contact with his or her employer during that period; or
- (f) the fact that the employee sought to take or avail himself or herself of any of the benefits of maternity leave, adoption leave or parental leave or the terms of his or her employment preserved under Part 5A.
- (2) An employee who is dismissed shall also be regarded for the purposes of this Part as unfairly dismissed if –

- (a) the reason (or, if more than one, the principal reason) is that the employee was redundant;
  - (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer; and
  - (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason connected with any of the reasons referred to in paragraph (1)(a), (b), (c), (d), (e) or (f).
- (3) Paragraph (2) does not apply in relation to an employee if –
- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit the employee to return to a job which is both suitable for the employee and appropriate for him or her to do in the circumstances;
  - (b) an associated employer offers the employee a job of that kind; and
  - (c) the employee accepts or unreasonably refuses that offer.
- (4) Where, on a complaint of unfair dismissal, any question arises as to whether the operation of paragraph (2) is excluded by the provisions of paragraph (3), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.
- (5) The States may by Regulations amend the reasons, or circumstances, in which an employee shall be regarded for the purposes of this Part as unfairly dismissed.”.

#### 11 Article 77B amended

In Article 77B(4)(b) for the word “complaint” there shall be substituted the word “complainant”.

#### 12 Article 104 amended

After Article 104(3) there shall be inserted the following paragraphs –

- “(3A) The States may by Regulations amend Part 3A.
- (3B) The States may by Regulations amend Articles 6, 57(2) or 73(4).”.

#### 13 Schedule 1 amended

- (1) In the sub-heading to Schedule 1 to the principal Law, for the words “Article 13” there shall be substituted the words “Articles 13, 55C, 55D, 60C, 60I, 60K, 60L, 60P and 60R”.
- (2) In Schedule 1 to the principal Law –
  - (a) for paragraph 5 there shall be substituted the following paragraph –

**“5 The calculation date**

For the purposes of this Schedule –

- (a) in the case of payment in respect of periods of leave to which an employee is entitled under Article 11, the calculation date shall be the first day of the period of leave in question;
- (b) in the case of an employee making an application for flexible working arrangements under Article 15A, the calculation date shall be the day on which the application was made;
- (c) in the case of an employee taking time off under Article 55C, the calculation date shall be the day of the appointment;
- (d) in the case of an employee who is required to take time off under Article 55D, the calculation date shall be the day before the commencement of that employee’s compulsory leave period;
- (e) in all other cases under Part 5A, the calculation date shall be the day before the first day of the period of leave in question;
- (f) in the case of a redundancy payment under Article 60C, the calculation date shall be the effective date of termination; and
- (g) in the case of a claim for a breach of Article 60O or 78A, the calculation date shall be the date of the complaint to the Tribunal.”;

- (b) after paragraph (8) there shall be added the following paragraph –

**“9 Time off for ante-natal care or compulsory maternity leave**

- (1) This paragraph applies in the case of an employee who is –
  - (a) entitled to take time off under Article 55B; or
  - (b) required to take compulsory maternity leave under Article 55D.
- (2) This Schedule applies to an employee in respect of whom paragraph (1) applies with the following modifications –
  - (a) for the period of 52 weeks mentioned in paragraphs 1, 2, 3 and 4 there shall be substituted the period of 12 weeks;
  - (b) paragraphs 3(2), 4(3) and 8 shall be deleted.”.

**14 Citation and commencement**

This Law may be cited as the Employment (Amendment No. 8) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

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- <sup>1</sup> *chapter 05.255*
  - <sup>2</sup> *chapter 26.900*
  - <sup>3</sup> *chapter 26.550*
  - <sup>4</sup> *chapter 12.050*
  - <sup>5</sup> *chapter 12.200*
  - <sup>6</sup> *chapter 20.600*
  - <sup>7</sup> *chapter 20.300*
  - <sup>8</sup> *chapter 26.900*
  - <sup>9</sup> *chapter 26.900*