

# **STATES OF JERSEY**



## **DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200- (P.19/2005): THIRD AMENDMENTS (P.19/2005 AMD.(3))– COMMENTS**

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**Presented to the States on 10th May 2005  
by the Employment and Social Security Committee**

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**STATES GREFFE**

## COMMENTS

### Report

Meetings have been held over the past 6 weeks with the Transport and General Workers Union at which the Employment and Social Security Committee was pleased to have achieved clarity on the issues that the union is attempting to address through Deputy Southern's proposed amendments.

Having given detailed consideration to Deputy Southern's final amendments, as lodged on 26th April 2005, the Committee has reached a neutral position on the first amendment and an acceptable solution with the TGWU for the proposed second amendment. However, differences still exist over 2 amendments for the reasons set out below. The Committee now believes it is for the States to decide on the outstanding points.

### Proposed Amendment 1

When the Committee considered the first amendment proposed by Deputy Southern on this matter, the Committee noted that the Royal Court had already set a high threshold for an application for interim relief by way of a mandatory injunction (UCM -v- Le Maistre). An amendment is considered to be unnecessary.

The TGWU's legal adviser was unconvinced that current case law adequately tackles prohibitory injunctions. It is not clear to the Committee that the amendment would apply only to prohibitory injunctions.

Whilst it is not a matter upon which the Committee feels particularly strongly, the Committee still remains to be convinced that the amendment is necessary to *'facilitate the smooth operation of the tribunal process and to maintain standards of "fair play" in employment relations'*.

### Proposed Amendment 2

Deputy Southern's amendment would remove the reference to the handbook, due to the union's concern that the Tribunal would have the power to refer to procedures contained within a handbook that had not been negotiated, but had been unilaterally imposed by the employer.

The Committee's amendment, as set out in the second amendments to P.19, provides that the Tribunal, when considering a unilateral reference and making a decision as to whether it has jurisdiction to hear the collective dispute, may have regard to any available procedures contained within a handbook and whether the party's failure to follow those procedures could be considered reasonable. The Committee considered that if the procedures referred to were non-negotiated, it would not necessarily be unreasonable for one of the parties to have failed to comply with them; however the amendment provides further clarity that this will be taken into consideration by the Tribunal.

The Committee was pleased to note that the union's view on this amendment, expressed in their letter of 19th April 2005, was that the suggested amendment substantially meets their concerns and is a *"great improvement on the existing article"* and the Committee hopes that the proposed change is accepted.

### Proposed Amendment 3

It is understood from the TGWU that this amendment is intended to enable the Tribunal to make an award which will unilaterally vary terms and conditions of employment where an employer has failed to recognise a union following a declaration by the Employment Tribunal. It is understood that this amendment is intended to be linked solely to the question of mandatory recognition of unions. (In the past, reference has been made to other issues such as Health and Safety.)

The Committee has particular reservations and concerns about the attempt to insert recognition provisions into part of a Law dealing with a resolution of collective employment disputes, and whether compulsory recognition of a trade union can be made a term and condition of the employment of an individual employee's contract.

The issue of mandatory recognition of Trade Unions was discussed during recent meetings with the TGWU. However, on the basis of consultation, and endorsed by recent submissions made in respect of the draft Law and codes of practice, the Committee had decided not to incorporate mandatory recognition of Trade Unions in legislation at this stage.

The Committee is also aware that many Jersey businesses – circa 88% – have 10 or fewer employees, 86% of those having 5 or less employees. It is not really practical, whatever formula is used, to enter into collective bargaining arrangements in such very small units. In this respect, the U.K. currently excludes small businesses of less than 21 employees from their comparable legislation.

The Committee therefore decided not to accept this amendment.

#### **Proposed Amendment 4**

The union is proposing the inclusion of a specific reference to compliance with ILO Conventions 87 and 98. These 2 Conventions are already binding on Jersey and the Policy and Resources Committee has the role of ensuring that the Island complies with its binding obligations. This is why the Law as drafted places the onus on that Committee for ensuring Jersey's international commitments are met.

As Conventions can be open to some interpretation, the focus needs to be on the right interpretation for Jersey. It is felt undesirable to incorporate a measure of uncertainty into the primary legislation. A Government interpretation, in this case Jersey's, is subject to monitoring by the ILO, via the Policy and Resources Committee, on a regular basis and we believe this will suffice. We therefore cannot accept this amendment.

The Committee is assured that other jurisdictions do not specifically refer to ILO Conventions in their primary legislation and therefore has misgivings about referring to specific international commitments in primary legislation.

The implementation of convention obligations is entirely a matter of domestic competence. Jersey's competence in these matters has never been questioned before and is regularly subject to scrutiny by the ILO. The draft Codes have been out in the first round of consultation and will be subject to further consultation once there is certainty about the content of the Law. I can assure Members that the final drafts will be scrutinised by us and our legal advisers to ensure that they fully address our international commitments.

The Committee has given its assurance that it has no intention of introducing either legislation or Codes which would be in breach of our international obligations.