STATES OF JERSEY

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DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200- (P.19/2005): ADDENDUM

Presented to the States on 26th April 2005
by the Employment and Social Security Committee

STATES GREFFE

DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200-
DRAFT CODES OF PRACTICE

Code 1 – Recognition of trade unions

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Seeking trade union recognition

Recognition of one or more trade unions occurs when an employer accepts a trade union as entitled to act on behalf of a group (or groups) of employees for specified purposes. Recognition can take a number of forms, but is usually associated with an employer's agreement to participate in collective bargaining with one or more trade unions and provides the basis for changes to be made to terms and conditions of employment.

When recognition is sought, it is important for each party to –

1. enter into voluntary resolution of issues;
2. respect the independence of the other;
3. be prepared to consult;
4. be prepared to negotiate in good faith;
5. listen to, take account of, and respond to the other's case;
6. maintain adequate records to show that the above processes have been undertaken.

Collective bargaining

The premise of collective bargaining is that it should take place in good faith.

Collective bargaining is a process of conducting negotiations about specified matters, usually about wages or physical working conditions and other terms and conditions of employment, between an employer and

representatives of a trade union, with a view to reaching agreement. The scope of collective bargaining is normally specified by the parties in an agreement on recognition and covers negotiations about pay, hours and holidays.

The following matters might be considered for negotiation and inclusion in an agreement on recognition, however a collective agreement does not have to cover all of the above and may also cover matters that are not listed.

1. The names of the parties
2. Definition of the bargaining unit
3. Statement of intent
4. The procedure in the event of a dispute over the interpretation of an agreement
5. Procedure for negotiation and constitution of a negotiating committee
6. Issues that may or may not be negotiated
7. The procedure in the event of failure to agree, following negotiations
8. The role of trade union representatives
9. The number and constituencies of trade union representatives
10. The election of trade union representatives
11. Time off for the trade union representatives
12. Training of trade union representatives
13. Facilities for the trade union
14. Deduction of trade union subscriptions from member's pay
15. Meetings of employees during working time
16. The procedure for calling a special meeting of the bargaining unit
17. Forums for consultation
18. Health and safety issues
19. Notice to terminate the agreement
20. Agreement on the disclosure of information (by either party) for collective bargaining purposes
21. An understanding that membership of the union is a matter of individual choice.

The bargaining unit

A bargaining unit is a group (itself perhaps comprising smaller groups) of employees covered by a recognition agreement. In determining the appropriate bargaining unit, the parties should take account of the following points –

1. Its being compatible with effective management and each other's views

2. Any current local, bargaining arrangement

3. The desirability of avoiding small, fragmented bargaining units within an undertaking

4. The characteristics of the employees falling within the proposed bargaining unit and of any other employees of the employer (including the need to avoid conflicts of interests between members)

5. The location of the employees and the true structure of the organisation

6. The wishes of the employees who are seeking to be represented by the trade union

For employers with employees working on more than one site, the factors that should be considered in deciding what constitutes the bargaining unit are **similarity of work and terms and conditions of employment**.

Percentages for Recognition

In the following circumstances, it would be reasonable for an employer to recognise a union –[1]

1. It would be considered reasonable for an employer to recognise a union if there is a minimum of 50%+1 employees in membership in respect of the bargaining unit. The aim should be to obtain a clear majority.

2. If a union cannot demonstrate that it has 50%+1 of employees in membership in respect of the bargaining unit concerned, or if the employer does not accept the union's estimate of membership, the unions should be able to demonstrate that at least 35% of the proposed bargaining unit are in membership of the applicant union (or would be willing to take up membership if recognition was granted), in order for a ballot of employees in the bargaining unit to be held.

3. If employees in the bargaining unit are balloted as to whether they are in favour of the union being granted recognition, 50%+1 of those entitled to vote should actually be voting and, of those voting, a minimum of 50%+1 of employees should vote in favour.

The process of seeking recognition

The following procedure detailing the required steps for both parties where a trade union seeks recognition by their employer would be considered reasonable –

	Seek informal talks with the employer with the aim of agreement in principle to recognise the union.	
formal talks take place etween the employer and the nion.		The employer declines to participate in informal talks with the union
	The union should write to the employer requesting recognition for the purposes of collective bargaining, including the following information – • identify the union • confirm it is listed with the registrar • the group/s, of employees on whose behalf recognition is sought • the number of those who are members of the union, or who would be willing to take up membership were recognition to be granted • the extent of recognition sought.	
	It would be considered reasonable for the employer to respond in writing to a request for recognition within 20 working days	If employer does not respond within 20 days, the union could consider approaching JACS
mployer confirms his greement to recognise the nion on different terms .g., the composition of the argaining unit)	Employer confirms agreement to the request on the terms proposed	Employer confirms rejection of the request, giving reasons
he parties negotiate with a ew to reaching agreement.		The union should consider approaching JACS.
the parties cannot reach greement, JACS could be pproached by either party.	If the employer agrees to the request, the parties should conclude a written agreement on recognition	
	Where a ballot is appropriate, the union should write to the employer to request a ballot, and to seek a meeting. The employer should respond within 10 working days.	
	Within a further 10 working days, both parties should meet to discuss and conclude arrangements for the ballot and for the union's representative to have access to the employees.	
	The ballot should take place 10 working days after arrangements for the ballot and for the union's representatives to have access to the employees have been finalised.	

Derecognition

The main factor in considering when it would be reasonable for a union to be derecognised is when the union is no longer representative of employees. It would be reasonable for a request for derecognition to be made by either employees, the union or the employer.[2]

In considering when it might be reasonable to derecognise a union, a similar procedure to that adopted for recognition should be applied and the following procedure would be reasonable –[3]

1. Where an employer (whether or not at the request of a minimum percentage of his employees) seeks to derecognise a union, then, in cases where recognition was awarded on the basis of union membership and a period of at least 3 years has elapsed since recognition was awarded, and it can be demonstrated conclusively that fewer than 50% of employees in respect of the bargaining unit concerned are in membership of the union, it is appropriate that the union be derecognised.

2. Where the union does not accept the employer's estimate of membership in respect of the bargaining unit concerned or, where an employer (whether or not at the request of at least 35% of his employees) seeks to derecognise a union in circumstances other than those set out above, then, provided that a period of at least three years has elapsed since recognition was awarded, a ballot of employees in the bargaining unit should be held.

3. If a ballot of employees in the bargaining unit confirms that 50%+1 of those employees voting and 50%+1 of those entitled to vote, are in favour of the union being derecognised, it is reasonable that the employer should derecognise the union.

4. It is suggested that both parties should seek to agree new arrangements and if agreement is not reached, JACS may be invited to assist at any stage of the process.

Changing a recognition agreement

Both the employer and employees/union should agree on the changing of a recognition agreement and where there is disagreement the same mechanism should be used as for the initial setting up of collective agreements, with JACS assistance.

Re-applying for recognition or derecognition

Where a ballot of employees on recognition or derecognition has taken place, it would not be reasonable for a further request for recognition, or derecognition, to be submitted by the same union or the employer, in respect of the same, or a substantially similar, bargaining unit, expect where there have been significant changes in the original circumstances of the case.

The time limits on submission of such applications limits are –[4]

- For recognition, an application should not be submitted before a period of at least one year has elapsed since derecognition occurred (to be equal with the procedure for recognition).

- For derecognition, an application should not be submitted before a period of at least 3 years has elapsed since recognition was awarded.

Disputes about recognition or derecognition

Where possible, disputes between an employer and a trade union about recognition or derecognition should be

resolved voluntarily by the parties. If this proves unsuccessful, or if no procedures exists for resolving disputes, the matter should be referred to JACS, which may make recommendations to either or both of the parties.

Inter-union issues

The following procedure should be adopted in circumstances where there are inter-union issues –[5]

1. If 2 or more unions wish to make a joint request for recognition in respect of the same group of employees, the unions should act jointly in preparing and submitting their request. They should confirm that they will co-operate with each other in a manner that is likely to secure and maintain stable and effective bargaining arrangements. If the employer wishes, the unions should enter into arrangements that provide for collective bargaining to be conducted by their working in unions as a single team at a single table.

2. Except in those circumstances set out below, no union should commence organising activities in respect of any bargaining unit where another union has the majority of employees in membership and/or is recognised to negotiate terms and conditions, unless responding to an employer initiative, which would have the effect of, directly or indirectly, undermining the position of the established union.

3. Where a union considers that another union has low levels of membership, and no agreement or a redundant agreement, within any organisation in respect of any group of employees, the union should consult with the other union, before commencing organising activities (or as soon as it is informed of the interests of the other union).

4. A dispute between trade unions about recognition should be resolved by the unions themselves using procedures that have the confidence of the parties to the dispute.

5. In circumstances when there is an existing union and a group of members want to transfer membership to a new incoming union, the two unions should seek to agree (as above). JACS may be asked to assist and mediate where appropriate. Reference should be made to the recognition and derecognition procedures in the code of practice, particularly to look at the percentage of employees who would join the incoming union.

Code 2 – Resolving Collective Disputes

Dispute resolution procedures

In accordance with the framework provided by the draft Employment Relations Law, the following dispute resolution procedure should be adopted. The assistance of JACS, or another independent source, should be invited, where necessary, if agreement is not reached by the parties.

Balloting for industrial action does not constitute unreasonable behaviour at any stage of the process. Limited immunities (see Part 3 of the draft Employment Relations Law) would apply if a ballot and any action was taken in accordance with the codes of practice, though it would be expected that both parties had tried to negotiate in good faith and brought in JACS, or other independent source, to try to resolve their differences beforehand.

	‘Negotiations’ (and discussions) must take place in accordance with rules, such as a collective bargaining agreement, ‘in good faith’ ↓ →	Settle

	Where negotiations break down without a settlement having been reached, either (or both) parties may seek/request assistance to reach agreement from JACS (or another source of independent assistance)	Settle – if agreement is reached, JACS produce a binding settlement document signed by both parties
	If JACS can't help the parties to settle, they can offer a voluntary, independent conciliation/mediation process to try to help parties reach a settlement through discussions and negotiation	Settle – if agreement is reached, a binding settlement document is produced and signed by both parties
	If no agreement is reached, JACS may offer to arrange independent binding arbitration (both parties need to agree the process and costs). Or, the 2 parties may arrange independent arbitration without JACS assistance.	Settle – if agreement is reached, a binding settlement document is produced and signed by both parties
venues have not been sted, the Clerk or Tribunal person may direct the to do so.	If all avenues for a negotiated settlement have been exhausted 'in good faith' (except arbitration), reference may be made to the Employment Tribunal	If both parties decide not to seek arbitration or go to a Tribunal and a negotiated settlement has not been achieved, but the Union or Association decides to take action, then this should be in accordance with the Code of Practice.
rence may be made by arties to an Employment al to avoid the dispute ing to industrial action.		One party may refer a dispute ONLY if the other is being 'unreasonable' AND all other mechanisms for resolution have been exhausted.
	Tribunal to make a declaration.	
	If the declaration incorporates any term or condition in an individual contract of employment, that may be enforced in Court by a party to that contract.	

Code 3 – Conduct of ballots

This code of practice is intentionally not overly prescriptive and provides only basic principles and minimum standards for balloting that are not intended to conflict with provisions for ballots in unions own rule books.

Balloting on industrial action

A ballot should have to take place before industrial action is taken[6].

Where a ballot is to be held, both parties should co-operate and behave reasonably and responsibly in connection with the ballot and access to the employees.

Certain requirements should be satisfied in relation to balloting in order to be considered 'reasonable', as follows –

1. The ballot should be conducted by an appropriate independent person and the name of the ballot scrutineer should be specified. JACS can assist in this process.

2. The ballot should be held in secret.

3. The ballot should be held in the workplace, by post, or a combination of the two, depending on the circumstances.

4. The ballot should be funded by the union, unless otherwise agreed with the employer.

5. The ballot should only ask questions that require a 'yes' or 'no' answer and more than one question may be asked on a ballot paper.

6. Ballot papers should be retained for at least one month. After one month, ballot papers should be destroyed.

7. If action is to be taken following a ballot, notice should be given of such information in the union's possession to help the employer make plans to enable him to advise his customers of the possibility of disruption so that they can make alternative arrangements or to take steps to ensure the health and safety of his employees, or the public, or to safeguard equipment which might otherwise suffer damage from being shut down or left without supervision e.g., the number, category or workplace of the employees concerned (not necessarily by individual name)[7].

8. The holding of ballots should not interrupt negotiations, if at all possible.

The following would be a reasonable procedure for the conduct of ballots –

1. An access agreement, preferably in written form, should be established. It should be agreed who should have access to the employees constituting the bargaining unit, and where, when, for how long and in what form this access is to be provided. The arrangements should reflect local circumstances.

2. Approaches to employees from the employer and union should be balanced and fair. Where they are suitable for the purpose, the employer's typical methods of communicating with his workforce should be used as a benchmark for determining how the union should communicate with members of the same workforce during the access period.

3. Where practicable, the employer should allow the union to hold a minimum of one meeting of at least 30 minutes in duration for every 10 working days of the access period, or part thereof, whic all workers or a substantial proportion of them are given the opportunity to attend. If a longer

meeting is required, it should be arranged to overlap the beginning or end of the day, running into the employees own time.[8]

4. Where practicable, employers should provide a notice board for the union to display written material at the place of work. The notice board should be in a prominent location in the workplace and the union should be able to display material, including references to off-site meetings, without interference from the employer.

5. The union should ensure that disruption to the business of the employer is minimised. Consideration should be given to arranging meetings of employees at the bargaining unit during rest periods or towards the beginning or end of the working day/shift.

6. The employer should not be expected to pay the employees if they are present at the workplace for the purposes of access when they would not otherwise have been at work nor receiving pay from the employer.

Code 4 – Limitations on Industrial Action

Essential services

The International Labour Organisation definition of the term ‘essential services’, includes only those services “whose interruption would endanger the life, personal safety or health of the whole or part of the population.”[9] It would be unreasonable for industrial action to be taken when such services would be interrupted.

However, any special provisions or limitations on industrial action for employees working in an ‘essential service’, or any other service, should be negotiated and agreed directly between the trade union and employer involved and should be included in a ‘relevant agreement’ (i.e. a collective or individual agreement, as defined in the Employment Law).

Secondary Action

It would be considered unreasonable to take industrial action in furtherance of a collective dispute in the following circumstances –[10]

1. Where action is taken in support of a 3rd party;
2. Where employees are not directly involved;
3. Where the dispute is not with the same employer;
4. Where the employees are not at the same place of work of those directly affected.

Picketing

Picketing is considered reasonable only when it is one of the following –

- to peacefully obtain and communicate information;
- to peacefully persuade a person to work or not to work.

Picketing in these 2 circumstances would be protected by immunities if all of those union members who are likely to be called to take part in the action have been balloted (in accordance with the code) and the majority of those are in favour of taking (or continuing) industrial action.

Civil wrongs would not be protected by immunities and would be considered unreasonable, such as –

- Unlawful threat or assault;
- Harassment (e.g. threatening or unreasonable behaviour causing fear or apprehension to those in the vicinity);
- Obstruction of a path, road, entrance or exit to premises;
- Interference (e.g. because of noise or crowds) in the rights of neighbouring properties (i.e. private nuisance);
- Trespassing on private property.

[1] *The views of employer and union respondents on percentages were polarised, however those respondents categorised as 'other' (i.e. not employers or employees as such) provided the 'middle ground' percentages that are proposed.*

[2] *All union respondents were in favour of only the union being able to request derecognition.*

[3] *The Forum asked whether derecognition should only occur at the request of at least a certain percentage of employees. The responses were one employer, 4 unions and one 'other' agreed, and 6 employers and 4 'others' did not agree.*

[4] *Responses were, 6 employers, one union and 5 'others' said a time period should apply; one employer, 3 unions and one 'other' said that a time period should not apply.*

[5] *7 employers, 2 unions and 6 'others' agreed that the code of practice should provide procedures for circumstances where there is an existing union and a group of members wants to transfer to a new incoming union. 2 unions did not agree that such procedures should be included in the code.*

[6] *All employer respondents and 2 of the 3 union responses agreed that a ballot should have to take place before industrial action is taken. One union responded that most unions already specify balloting requirement in their rule books.*

[7] *All employer respondents agreed with the inclusion of this requirement and all union respondents disagreed. In the U.K., notice of official action must be provided to the employer, including what groups are to take part in industrial action and what they will be doing. The Forum suggested that it would be fair to expect an employer to be provided with enough information to work out how the business will be affected.*

[8] *This provision was considered by some respondents to be too prescriptive and also that a meeting of 30 minutes was not sufficient. The Forum considered the responses and emphasized that the 30 minutes provision is a minimum.*

[9] *Most respondents did not agree that that an 'essential service' should be defined as widely as had been suggested by respondents to the 2001 consultation and one union respondent suggested the ILO definition.*

[10] *The majority of respondents agreed with the suggested statements, but one union respondent did not agree with any of the statements. NOTE – The Forum suggested that the statement 'where the employees are not a party to the dispute' could be substituted for the 4 statements, as it adequately covers their meaning and is already used by a large local employer as a definition of secondary action.*