

**DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 3) (JERSEY) LAW 200**

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**Lodged au Greffe on 3rd December 2002  
by the Legislation Committee**

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## **European Convention on Human Rights**

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft Advocates and Solicitors (Amendment No. 3) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

## REPORT

The Advocates and Solicitors (Jersey) Law 1997 (“the 1997 Law”) revised and consolidated the Laws relating to the right to practise as an advocate or a solicitor (*écrivain*) in the Island.

Article 3 of the 1997 Law sets out the requirements for admission of advocates to the Bar. Amongst those requirements are that a candidate has been employed for the period of two years immediately preceding his or her application in a Jersey law firm, the Law Officers’ Department, or the Judicial Greffe (referred to collectively in the Law as “a relevant office”).

Article 4 of the 1997 Law sets out the requirements for admission as a solicitor (*écrivain*). Amongst the requirements for admission are that the candidate has been employed, for the period of three years immediately preceding his or her application, in a relevant office. The period of three years, in the case of a solicitor, applies where the candidate has either -

- (a) a law degree of a British University or of such other university or institution as the Board of Examiners approves, which includes such subjects as may be specified by Rules of Court; or
- (b) passed the examinations and assessments included in any court validated by the Common Professional Examination Board in England and Wales or such other examinations and assessments as may be specified by Rules of Court.

If the candidate does not satisfy (a) or (b) above, he or she is then required to complete a total of five years employment in a relevant office of which the whole of the two years immediately preceding his or her application has been spent in such employment.

The purpose of the *projet de loi* is twofold -

1. to allow part of the period of employment a candidate must complete to be qualified to be an advocate or solicitor to be undertaken at the offices of a Jersey law firm outside Jersey;
2. to allow breaks in that period of employment to be disregarded where there was an adequate reason for the break.

### **Employment outside Jersey**

This matter was discussed by the Board of Examiners earlier this year. It considered whether in certain circumstances the whole of the relevant qualifying period could be spent in an office outside the Island. It was felt that an important part of the training period for a Jersey qualified lawyer is to practice in Jersey. The advice of the Board was that it would nonetheless be appropriate to amend the Law so as to permit an individual to spend up to six months of the qualifying period in an office of a Jersey firm of lawyers situated outside the Island provided that the Jersey law firm certified that, during the period of secondment outside the Island, the person had been engaged predominantly in matters of Jersey law.

The *projet de loi* seeks to give effect to that advice. Accordingly, if a person’s employment in an advocate’s or solicitor’s office outside the Island did not exceed six months and that person’s employing advocate or solicitor certified that he or she was engaged predominantly in matters of Jersey law whilst working outside the Island, that period would count towards the candidate’s relevant qualifying period.

### **Breaks in the qualifying period of employment**

The Legislation Committee’s attention was drawn to the fact that Articles 3 and 4 of the 1997 Law require the period of qualifying employment to be a period *immediately preceding* the candidate’s application for admission to the Bar or to practice as a solicitor. The requirement of the qualifying period having immediately to precede the application has the potential to cause hardship. For example, a candidate might have already completed the minimum qualifying period; but if, before he or she had passed the examinations, that employment was lost through no fault of the candidate and, despite his or her best endeavours, the candidate was not immediately able to find employment with another firm, the candidate would lose the benefit of the qualifying period completed and would have to complete the requisite qualifying period all over again.

The *projet de loi* seeks to overcome this potential hardship by providing that, in reckoning the qualifying period, a break in the period of employment not exceeding six months may be discounted. The Attorney General would have to be satisfied that there was an adequate reason for any such break in the period of qualifying employment. Thus, for example, if the person concerned had voluntarily ceased to continue in such employment for no compelling reason, the break in employment would not be discounted. If on the other hand the break in employment resulted from simple redundancy without fault on the part of the person concerned, the break would be able to be discounted.

## **Conclusion**

The Committee believes that neither of the proposed amendments compromises the standards and experience required to practise Jersey law.

The intention is to make for more flexibility and fairness in laying down the requirements for qualification to seek admission to the Jersey Bar or as an *écrivain*. The proposals have been the subject of consultation and there is broad agreement that the *projet de loi* will achieve that end.

## **Financial/manpower implications**

This Draft Law has no implications for the financial or manpower resources of the States.

## **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 29th November 2002 the Legislation Committee made the following statement before Second Reading of this *projet* in the States Assembly -

In the view of the Legislation Committee the provisions of the Draft Advocates and Solicitors (Amendment No. 3)(Jersey) Law 200- are compatible with the Convention Rights.

### **Explanatory Note**

The purpose of this Law is to amend further the Advocates and Solicitors (Jersey) Law 1997 -

- to allow part of the period of employment a person must complete to be qualified to be an advocate or solicitor to be undertaken at the offices of a Jersey advocate or solicitor outside Jersey;
- to allow a break in that period of employment (or immediately following that period) to be disregarded where there was an adequate reason for the break or breaks. Any such break will not however count as part of the period of employment.

**ADVOCATES AND SOLICITORS (AMENDMENT No. 3) (JERSEY) LAW 200**

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**A LAW** to amend further the Advocates and Solicitors (Jersey) Law 1997; sanctioned by Order of Her Majesty in Council of the

(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

**STATES OF JERSEY**

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The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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

**ARTICLE 1**

In this Law “the principal Law” means the Advocates and Solicitors (Jersey) Law 1997,<sup>[1]</sup> as amended.<sup>[2]</sup>

**ARTICLE 2**

After Article 3(3) of the principal Law<sup>[3]</sup> there shall be added the following paragraphs -

“(4) For the purpose of paragraph (2)(b) employment in an advocate’s or solicitor’s office outside the Island or in more than one such office during the period of two years mentioned in that paragraph shall be taken to be employment in a relevant office during that period if -

- (a) the total period of employment in the office or offices outside the Island did not exceed 6 months; and
- (b) the advocate or solicitor in whose office the person was employed or, if the person was employed in more than one such office, each of them, certifies that during the period of the person’s employment in that office the person was engaged predominantly in matters of Jersey law.

(5) A break in the period of employment of two years mentioned in paragraph (2)(b) or a break of employment immediately following that period of employment shall be disregarded if -

- (a) the break did not exceed 6 months; and
- (b) the Attorney General is satisfied that there was an adequate reason for the break,

but any such break or breaks shall not count as part of the period of employment.”.

**ARTICLE 3**

After Article 4(3) of the principal Law<sup>[4]</sup> there shall be added the following paragraph -

“(4) For the purpose of paragraphs (2)(c) and (3)(b) employment in an advocate’s or solicitor’s office outside the Island or in more than one such office during the period of three years mentioned in paragraph (2)(c) or the period of five years or two years mentioned in paragraph (3)(b) shall be taken to be employment in a relevant office during that period if -

- (a) the total period of employment in the office or offices outside the Island did not exceed 6 months; and
- (b) the advocate or solicitor in whose office the person was employed or, if the person was employed in

more than one such office, each of them, certifies that during the period of the person's employment in that office the person was engaged predominantly in matters of Jersey law.

(5) A break in the period of employment of three years mentioned in paragraph (2)(c) or a break in the period of employment of two years mentioned in paragraph (3)(b), or a break of employment immediately following either period of employment shall be disregarded if -

- (a) the break did not exceed 6 months; and
- (b) the Attorney General is satisfied that there was an adequate reason for the break,

but any such break or breaks shall not count as part of either period of employment.”.

#### ARTICLE 4

##### **Citation and commencement**

This Law may be cited as the Advocates and Solicitors (Amendment No. 3) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

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[1] Volume 1996-1997, page 569.

[2] Volume 1998, page 8.

[3] Volume 1996-1997, page 573 and Volume 1998, page 8.

[4] Volume 1996-1997, page 574.