

**DRAFT REGULATION OF UNDERTAKINGS AND  
DEVELOPMENT (AMENDMENT No. 10) (JERSEY)  
REGULATIONS 199**

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**Lodged au Greffe on 16th March 1999  
by the Finance and Economics Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

## REPORT

### **Background**

The last amendment (Regulation of Undertakings and Development (Amendment No. 9) (Jersey) Regulations 1998) was approved by the States on 19th May 1998 (P.22/98), and came into force on 1st June 1998. This amendment was brought forward as a consequence of the Finance and Economics Committee being requested to take the necessary steps to tighten up the application of the Regulation of Undertakings and Development Law, including the reintroduction of the requirement that all increases in staff numbers will be subject to licence.

The Finance and Economics Committee has reviewed the operational effectiveness of the Regulation of Undertakings and Development Law over the last eight months, in the light of problems and difficulties encountered, and also its discussions with individual firms, representative organisations, etc. The Committee now considers the most important issue to resolve is the need to gain the confidence of the private sector on the way the Law is applied in the Island on a level playing field basis. For this to be achieved, it is considered that its provisions must apply equally in the public sector as in the private sector. The Committee's principal reason for bringing this amendment forward is therefore to achieve equity between the private and public sectors. However, the opportunity has been also taken to re-define some situations and to exempt certain categories of local residents.

### **The public sector**

Following much canvassing from firms in the private sector, the Finance and Economics and Establishment Committees agreed in late 1998 to ask the States to bring the public sector within the scope of the Regulation of Undertakings and Development Law. This will also apply to the parishes.

If the States approve the amendment, the public sector and parishes (and all organisations presently treated as exempt because they fall within the term "on behalf of any administration of the States") will be required to -

- (a) obtain a licence to -
  - (i) engage additional staff;

- (ii) engage non-locally qualified staff to fill vacancies;
  - (iii) engage locally qualified staff to fill vacancies that are over six months old;
- (b) submit manpower returns on a quarterly basis.

However, because of the administrative burden that would arise if the Finance and Economics Committee had to deal with individual applications in respect of all of the above, it has always been the intention for it to enter into three-year licence agreements with the organisations concerned (in exactly the way it would do with private sector undertakings) as outlined below -

- (1) The parishes and trading Committees of the States to be treated as separate undertakings, with the Committee entering into individual three-year licence agreements;
- (2) Charitable organisations whose employees are not classified as the employees of any States Committee, (i.e., Les Amis Inc., Oakfield Industries etc.) will come under the provisions of Part II of the Law for the engagement of staff and the submission of manpower returns. (However, in order to minimise the effect on these organisations they will be approached individually by Officers of the Regulation of Undertakings and Development Office so that appropriately flexible three-year licence agreements can be drawn up to ensure that the issue of future staffing never becomes a problem for them).
- (3) The Establishment Committee to be the sole authority and agent representing all the non-trading Committees, with the States Personnel Department providing the information required by the Finance and Economics Committee in order to allow it to determine any new or revised three-year licence agreement.

### **Definition of “child”**

The Committee has experienced some difficulty where, for example, middle-aged and elderly people have expressed a wish to live and work in the Island, despite never having actually lived here, on the grounds

that one of their parents was residentially qualified. As a way of rectifying this situation, the Committee has decided to define a “child” in this context as being “below the age of 18”.

### **Spouses and children of those who have been continuously resident for five years**

The Committee’s policy is to treat the spouses and children of “persons who have been resident in the Island during the period of five years immediately preceding their engagement” as they would the spouse or child of a residentially qualified person. The Committee has agreed that the Regulations should allow for this, just as they do at the moment in respect of the spouses and children of residentially qualified people.

### **Special needs**

In considering applications for additional staff or for the filling of vacancies, the Committee’s policy has been to give every possible encouragement to employers to employ those with learning difficulties/disabilities.

However, following requests from a number of representative organisations, and consultation with the Employment and Social Security Department, the Finance and Economics Committee is now proposing to exempt all those with recognised learning difficulties/physical disabilities by exempting all people registered or recommended by the “Workwise - Supported Employment Service” - a new service created as a result of the amalgamation of the “Headway” and “Special Employment Needs” employment schemes.

### **School students and those over normal retirement age**

The Committee also proposes to exempt from the present provisions -

- (i) locally qualified school pupils and further education/university students working in Saturday or holiday jobs and in work experience/work placement situations;
- (ii) those over normal retirement age who wish to return to work.

### **Explanatory Note**

These Regulations amend the Regulation of Undertaking and Development (Jersey) Regulations 1978 in so far as they relate to exemptions from the provisions of Part II of the Regulation of Undertakings and Development (Jersey) Law 1973 (Regulation of Undertakings).

In particular the Regulations -

- (a) omits the exemption in respect of any undertaking carried on by or on behalf of the States, or any administration of the States, or any parochial authority;
- (b) replaces the exemption relating to increases in the number of persons engaged in an undertaking to provide for the employment of additional categories of locally qualified people.

The Regulations also omit a redundant provision of the 1978 Regulations.

## Regulation of Undertakings and Development (Jersey) Law 1973

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### REGULATION OF UNDERTAKINGS AND DEVELOPMENT (AMENDMENT No. 10) (JERSEY) REGULATIONS 199

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*(Promulgated on the      day of      199 )*

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#### STATES OF JERSEY

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The      day of      199

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**THE STATES**, in pursuance of Articles 2 and 3 of the Regulation of Undertakings and Development (Jersey) Law 1973,<sup>1</sup> as amended,<sup>2</sup> have made the following Regulations -

**1.** For sub-paragraph (a) of paragraph (1) of Regulation 1 of the Regulation of Undertakings and Development (Jersey) Regulations 1978,<sup>3</sup> as amended<sup>4</sup> (hereinafter referred to as “the principal Regulations) there shall be substituted the following sub-paragraph -

“(a) any undertaking carried on by or on behalf of the Crown;”.

**2.** For Regulations 1A and 1AA of the principal Regulations there shall be substituted the following Regulation -

**“1A.-(1)** The engagement of a locally qualified person in a position in an undertaking shall be exempt from the provisions of sub-paragraph (b) of paragraph (1) of Article 2 of the principal Law -

<sup>1</sup> Recueil des Lois, Volume 1973-1974, pages 112 and 113.

<sup>2</sup> Recueil des Lois, Volume 1975-1978, page 2, Volume 1992-1993, page 89, Volume 1996-1997, page 1056, and No. 7588.

<sup>3</sup> No. 6566.

<sup>4</sup> Nos. 7060, 7882, 8383, 8591, 9067 and 9235.

- (a) if at any time during the six months prior to the engagement of the person in the position a person had been engaged in that position; or
- (b) if the person -
  - (i) is registered with or recommended by the Workwise - Supported Employment Service operated by the Employment and Social Services Committee;
  - (ii) is a student; or
  - (iii) has attained the age of 65 years.

(2) For the purpose of paragraph (1) of this Regulation a person is locally qualified for engagement in a position in an undertaking -

- (a) if, at all times during the term of that engagement, consent to a transaction to which Part III of the Housing (Jersey) Law 1949 applies would be granted by the Housing Committee by virtue of a sub-paragraph of paragraph (1) (other than sub-paragraph (l) or (m)) of Regulation 1 of the Housing (General Provisions) (Jersey) Regulations 1970, as amended, were the person to be an intending purchaser, transferee or lessee; or
- (b) if during the whole of the period of five years immediately preceding the start of the engagement the person was ordinarily resident in the Island; or
- (c) if the person is the spouse of a person referred to in sub-paragraph (a) or (b) of this paragraph; or

- (d) if the person has not attained the age of 18 and is a child of a person referred to in sub-paragraph (a), (b) or (c) of this paragraph.

(3) For the purpose of sub-paragraph (b) of paragraph (2) of this Regulation a person is to be taken to have been ordinarily resident on the Island during any period the person was absent from the Island for educational purposes if immediately before leaving the Island to undertake that education the person was ordinarily resident on the Island and immediately on finishing that education the person was again ordinarily resident in the Island.

- (4) In this Regulation -

“child” includes an illegitimate child, a step child and an adopted child;

“student” means a person undertaking full time studies at an educational facility either on or off the Island.”.

- 3. In Regulation 2 of the principal Regulations -

- (a) paragraph (1) shall be omitted;
- (b) the numbering of paragraph (2) shall be omitted.

4. These Regulations may be cited as the Regulation of Undertakings and Development (Amendment No. 10) (Jersey) Regulations 199 and shall come into force on