

# STATES OF JERSEY



## **DRAFT EMPLOYMENT RELATIONS (AMENDMENT) (JERSEY) LAW 200- (P.271/2005): COMMENTS**

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**Presented to the States on 13th January 2006  
by the Minister for Social Security**

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**STATES GREFFE**

## COMMENTS

The Minister for Social Security has considered Deputy Southern's amendment but is unable to support it. The Minister therefore would ask members to reject the amendment for the reasons given below.

- (1) The Law has not yet received approval from the U.K.'s Privy Council and the Minister for Social Security is currently seeking expert legal advice on the draft Law and its associated codes of practice (see the Minister's Comment on Deputy Southern's 'Employment Legislation: Petition' P.214/2005 Com.)
- (2) The Minister considers that this amendment could have a significant effect locally, particularly on small employers, by enforcing collective bargaining rights irrespective of the number of employees in the bargaining unit. Considering that 93% of local employers employ fewer than 21 employees the effect of this amendment is potentially far-reaching. Employers with fewer than 21 employees are exempt from the equivalent U.K. provisions. Should Deputy Southern's amendment be accepted, the requirement for an exemption would require further public consultation.
- (3) The Minister considers that if employees have a statutory right to representation, it follows that minimum disciplinary and grievance processes might be required in Law, as in the U.K., and the whole system would become very legalistic. The aim is to create a simple framework of primary legislation which encourages good practice and provides a dispute resolution process to support the early resolution of disputes. These are to be supplemented by codes of practice covering balloting, recognition, limitations on industrial action, and resolution of collective disputes.
- (4) The Minister is not confident that the amendment achieves what Deputy Southern intends. As currently drafted the amendment changes the definition of 'collective employment dispute', but does not "*replace any arguments over the unreasonableness or otherwise of any such action*", as Deputy Southern suggests it does. The concept of 'reasonableness' still remains in the codes of practice for the Tribunal to take into account when considering a dispute; testing for 'reasonableness' is an accepted legal concept utilised in much other legislation.
- (5) The amendment inserts reference to criteria set out in a 'code of practice', however it should properly refer to criteria "set out in **an approved** code of practice" in order to comply with the definition in the draft Employment Relations Law, where an **approved** code of practice is specifically one that has been approved by the Social Security Minister.
- (6) The Minister considers that the amendment to the draft Employment Relations Law should be rejected for the reasons given above.