STATES OF JERSEY

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WOOLWORTHS EMPLOYEES: REDUNDANCY PAYMENTS (P.2/2009) – AMENDMENT

Lodged au Greffe on 13th January 2009
by Senator A. Breckon

STATES GREFFE

WOOLWORTHS EMPLOYEES: REDUNDANCY PAYMENTS (P.2/2009) – AMENDMENT

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1 PAGE 2 –

For the figure "£139,500" substitute the figure "up to £289,500".

2 PAGE 2 –

Renumber the proposition as paragraph (a) and after that paragraph insert the following new paragraphs–

"(b) to request the Minister for Treasury and Resources to register and pursue a claim for up to £289,500 relating to the payments referred to in paragraph (a) with the Joint Administrators of Woolworths plc., namely Mr. Neville Kahn, Mr. Daniel Butters and Mr. Nick Dargan of Deloitte LLP, P.O. Box 810, 66 Shoe Lane, London, EC4A 3WA;

(c) to request the Minister for Social Security to seek the assistance of the Jersey Advisory and Conciliation Service to verify –

(i) whether appropriate notice payments have been made to former Woolworths employees in Jersey in accordance with the requirements of the Employment (Jersey) Law 2003; and

(ii) how such payments compare to the terms and conditions and payments made in relation the redundancy of employees of the company in the United Kingdom."

SENATOR A. BRECKON

REPORT

The States have made very slow and painful progress in enacting employment protection legislation and should, by now, have had in place a statutory system to provide redundancy payments for those who lose their jobs without any other adequate provision.

I believe information I have set out below demonstrates that we, as a Government, have consistently failed to act to protect vulnerable workers.

It has happened before – more than once – the cry went up "something must be done" – BUT IT WASN'T!

The company building Queen's Valley reservoir – Sheppard Hill – went bust, leaving workers (in the month of December of that year) owed wages, holiday pay, Christmas bonus/savings, etc., relying on whip-rounds in the pubs and some sterling work from the late Fred Clarke as Constable of St. Helier.

Also, 2 building companies went bust with similar consequences to the above – again, protection for workers was limited, in the main, to Parish relief, including loans or to voluntary effort.

So although these circumstances are not identical to the Woolworths situation, they demonstrate similarities in giving basic rights and protection to the workers.

To give some background I have provided some extracts from relevant reports below and appended the full Reports and Propositions for background information, because I believe that is important that Members recognise the failings of our system.

I do this because I believe it is EVIDENCE as to why we should support measures that give some financial comfort to the local workers of Woolworths.

Support to staff at Woolworths

While I support the efforts made by Deputy Southern and others to date to offer moral and practicable support to staff at Woolworths in Jersey, I believe the proposals do not go quite far enough – I have therefore proposed these amendments.

Before I give some explanation for the various paragraphs, I wish to make some general observations.

Employment of young people

Woolworths have had a policy for many years of employing young people, mainly between the ages of 15 and 20 years old. Hundreds, if not thousands, of youngsters have worked there; as well as being paid they have learned some life-skills. In the main, young people have worked Saturdays, but also during busy periods over the summer or in December. My reason for saying this is that these young people are now witnessing their colleagues being put out on the street with hardly any more than a begrudging thank you. What sort of example or message does this send out from government when they ask quite rightly –

- How can this happen?
- Why aren't there safeguards in place?
- What is anybody going to do about it?

While we can plan and do talk about citizenship programmes and engaging young people – when they witness real-life events like this is it any wonder they ask if the Government is living in the real world?!

Loyalty NOT rewarded

They Jersey employees of Woolworths have remained loyal to the last. They were told on 27th November 2008 that a buyer may be found. They had no reason to believe that they would not be treated in a similar manner to their colleagues in the UK. The Jersey store was profitable and had takings in excess of £200,000 in December 2008. On 30th December the staff were told, as the shop was closing for business, that they would not be receiving similar severance terms to their U.K. colleagues.

Letter of termination

A copy of letter and enclosure delivered in bulk to the Woolworths Jersey store on Friday 9th January 2009 is attached. As you will see, it is different to the one issued on 3rd January in that the 4th paragraph has been withdrawn. As you will see, the administrator did not even have the decency to individualise the letters. They were delivered by courier in bulk in plain envelopes and it was left for the staff to distribute them amongst themselves.

While **my amendments** in themselves, or indeed that of Deputy Southern will not put everything right, including the damage done to the Island's reputation outside of the Island, by adverse publicity, it can, I believe, demonstrate publicly a duty of care and compassion and provide some comfort to those affected and their families.

By adding £150,000

This allows for both a period of notice, which is an entitlement under Jersey Law, which the administrator has remained silent upon, and also for loss of employment through equivalent redundancy terms, and is a maximum amount that could be payable.

New paragraph (b)

"to register a claim with the administrator"

The UK Administrator has not recognized either the Minimum Periods of Notice in Jersey or acknowledged a similar provision for notice contained within the individual contracts I have seen.

There is no easy and timely remedy for the individuals involved; however, a collective challenge on their behalf with details available from employment records, could, in my opinion, have merit.

Paragraph (c) is to request the Minister for Social Security to seek the assistance of the Jersey Advisory and Conciliation Service to verify the employment details of former Woolworths employees in Jersey in accordance with the requirements of the Employment (Jersey) Law 2003; and how such payments would compare to the terms and conditions and payments made in relation the redundancy of employees of the company in the United Kingdom.

Why no redundancy scheme in Jersey?

For Members' information I have attached details which show that a redundancy scheme would now be in place had it not been "scuppered" by a former Industries Committee in 2000, who amended the proposition (as set out below) to give greater priority to "the status and activities of trade unions".

Therefore, I believe because of this period of inactivity in progressing a Jersey redundancy scheme, the States owe a duty of care, and indeed have some moral obligation to those, such as the employees of Woolworths, who are adversely effected by a decision of the UK receiver – who is making profit from the lack of protection for local workers on the local Statute.

The Isle of Man has had a redundancy scheme since 1990

Set out below is an extract from an e-mail exchange I have had with the Isle of Man –

> "Under the Isle of Man's Redundancy Payments Act 1990, employees with a minimum of 2 years' service are legally entitled to redundancy payments from their employer. Government funds are available through the DHSS where an employer may have insufficient funds to make such payments. Details of redundancy payment rights and basis for calculating payments can be found at http://www.gov.im/lib/docs/mirs/guides/aguidetoredundanciesweb.pdf. Employers or employees seeking confidential advice regarding the management of redundancies can contact the Manx Industrial Relations Service on 01624 672942 or e-mail iro@ir.gov.im
>
> In the case of Woolworths – and any other business in administration – the administrator must comply with the law in each of the relevant jurisdictions. As a result, Deloittes has confirmed that the 56 former employees of Woolworths IOM will receive payments compliant with the IOM statutory minimum. It is difficult for administrators to pay more than the statutory minimum as other creditors may then have a basis for a claim against the administrator.
>
> I hope this helps.
>
> Chief Executive
>
> Isle of Man Department of Trade & Industry"

For Members' information I have attached the letters given to employees of Woolworths Jersey on 3rd and 9th January 2009. I would ask Members to note the missing fourth paragraph on the second letter.

Deloitte.

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0207479 5110

3 January 2009

Our ref: NBK/JH/E

Dear Sir/Madam

Woolworths Plc – in Administration ("the Company")

As you are aware, Neville Kahn, Daniel Butters and Nick Dargan were appointed Joint Administrators of the above Company on 27 November 2008.

Unfortunately, no sale of the business has been possible, and we are unable to make any further funds available to the Company to pay your wages after 3 January 2009. You are accordingly redundant with immediate effect.

Your wages and salaries for the period that you have worked for the Company whilst in Administration will be paid on the normal due date.

Since the Company is in insolvency proceedings, you may be able to claim certain payments from the National Insurance Fund. We enclose various information leaflets including a booklet that will inform you how you may be able to claim from the National Insurance Fund certain arrears of wages, holiday pay, compensatory notice or redundancy pay that may be due to you is enclosed. Please note that funds from the National Insurance Fund are subject to limits. When you have completed the form, please return it to Woolworths HR department in London for checking before it is sent by us to the Redundancy Payments Service.

You will probably feel it is advisable to attend your local unemployment office as soon as possible and sight of this letter may assist that office's understanding of your circumstances. I would also draw your attention to the leaflet attached from the Insolvency Service in respect of queries and claiming any benefits that may be due to you. You should also note that any benefits in kind you had under your contract of employment will end on your termination date.

The Company regrets that it has been necessary to terminate your employment on the ground of redundancy. The Joint Administrators would like to thank you for all your help during a difficult period and to wish you all the best in your future career.

Yours faithfully
For and on behalf of Woolworths plc

David Langton
For N B Kahn
Joint Administrator

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9 January 2009

Our ref: NBK/JH/E

Dear Sir/Madam

Woolworths Plc – in Administration ("the Company")

As you are aware, Neville Kahn, Daniel Butters and Nick Dargan were appointed Joint Administrators of the above Company on 27 November 2008.

Unfortunately, no sale of the business has been possible, and we are unable to make any further funds available to the Company to pay your wages after 9 January 2009. You are accordingly redundant with immediate effect.

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Yours faithfully
For and on behalf of Woolworths plc

pp David Langton
For N B Kahn
Joint Administrator

THE INSOLVENCY SERVICE

www.insolvency.gov.uk

Your claim for payments from the National Insurance Fund will be dealt with by the Redundancy Payments Service.

Their aim is to deal with 78% of claims within 3 weeks and 92% within 6 weeks of receipt. To avoid any delays with dealing with your claim we would ask that you keep any correspondence, emails or telephone calls to a minimum. You only need to contact them if the information that you gave on the claim form has changed. If they need any further information to enable them to deal with your claim they will contact you.

Information about claims from the National Insurance Fund is available in the booklet 'Redundancy and Insolvency - A guide for Employees' which you will receive from the insolvency practitioner now dealing with your former employer's insolvency. If you did not receive this booklet it is available from our publications order line on 0845 015 0010 or from our website at www.insolvency.gov.uk.

If, however, you do telephone the Redundancy Payments Service they will need to ask you some security questions which may include your National Insurance number and your date of birth. It would therefore be helpful if you have these available before you telephone.

You should also be aware that during the notice period you must keep any loss of income to a minimum by either claiming all benefits (e.g. Job seekers allowance) to which you are or become entitled, trying to find another job and/or taking your full salary during the notice period. Any failure by you to take advantage of reducing your loss of income will result in any final payment to you being reduced by the amount you should have claimed but failed to do so.

To give Members some background to the progress, or lack of it, in Employment legislation, I have attached some background below.

1. The history

In 1997 the Employment and Social Security Committee ("the Committee") took over responsibility for industrial relations from the former Industrial Relations Committee. In November of that year the States approved the Policy and Resources Committee's proposition, which included action to be taken by the Committee to develop an industrial relations strategy.[1] In addition to this initiative, the Committee was also charged in that same debate with introducing minimum wage and maternity policies for the Island.

2. The minimum wage and "Fair Play in the Workplace"

Minimum wage

In 1997 the Committee had already commissioned some research into the need for and the impact of a minimum wage policy in the Island. The result of that research and extensive consultation was placed before the States in a report and proposition that was debated in March 1999 (P.227/98). During the debate the States voted, not only in favour of the introduction of a minimum wage policy, but also for the establishment of an ACAS style advisory and conciliation service to be known as the Jersey Advisory and Conciliation Service (JACS), supported by a Tribunal type service and a consultative body to be known as the Employment Forum. The drafting instructions for the Minimum Wage Law were subsequently sent to the Law Draftsman, who had indicated that the Law could not be effectively implemented until such time as basic employment legislation supporting it, and also a system to deal with its enforcement, were in place.

"Fair Play in the Workplace"

The Committee responded to the request for improved employment legislation by producing a comprehensive publication, "Fair Play in the Workplace" ("Fair Play"), which was circulated Island-wide to inform the debate. This continued throughout 1999 with numerous consultative meetings and seminars. The publication aimed to –

- promote modern employment relations practices in the Island;
- outline the issues commonly affecting employers, employees and trade unions;
- ask Islanders' views as to whether or not change or improvement was needed in workplace practices to take the Island into the 21st century and beyond.

Employment Protection Progress

The (then) Social Security Committee, after a long consultation process, brought proposals (P.99/2000) to the States in the following terms (with my emboldened text below).

P.99/2000: EMPLOYMENT LEGISLATION

Lodged au Greffe on 20th June 2000
by the Employment and Social Security Committee

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 16th March 1999 in which they approved the introduction of legislation to provide for the introduction of a minimum wage and a trainee wage and the establishment of a Jersey Advisory and Conciliation Service and an Employment Tribunal; and

1. to approve the introduction of legislation as detailed in Part Two of the report of the Employment and Social Security Committee dated 8th June 2000, to –

   (a) facilitate the introduction of the minimum wage, including provisions to introduce pay statements, and to offer protection from unfair dismissal;

   (b) establish acceptable contractual minimum standards;

   (c) revise the Industrial Disputes (Jersey) Law 1956, as amended, as described in the said Report;

2. to charge the Committee to develop such further measures as may be necessary, as detailed in Part Three of the Report of the Employment and Social Security Committee dated 8th June 2000, to deal with the issues of –

   (a) the status and activities of trade unions in the Island;

   (b) redundancy, maternity, equal pay and equal opportunities and any issues regarding discrimination in the work place;

   (c) flexible working and family friendly policies and the protection of employees involved in business mergers and acquisitions.

EMPLOYMENT AND SOCIAL SECURITY COMMITTEE

With regard to the above, a redundancy scheme would now be in place had it not been "scuppered" by a former Industries Committee in 2000, who amended the proposition (above) to give greater priority to "the status and activities of trade unions". This, by its inclusion in the "first phase", has led to years of delay, because of the Industries Committee's emphasis on trade union activity.

Their amendment (P.183/2000 lodged on 24th October) was in the following terms –

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

(a) *after paragraph (1) insert the following paragraph –*

(2) to charge the Employment and Social Security Committee, in consultation with the Industries Committee, **as part of its first phase of new legislation as set out in paragraph (1)** above, to introduce legislation, or amend existing legislation as appropriate –

(i) to provide statutory recognition and regulation of trade unions in the Island;

(ii) to provide for the regulation of employee/employer relations; and

(iii) to define and regulate legitimate industrial action.

(b) *renumber paragraph (2) as paragraph (3).*

(c) *in the renumbered paragraph (3) delete sub-paragraph (a) and renumber sub-paragraphs (b) and (c) accordingly.*

INDUSTRIES COMMITTEE

The introduction and acceptance of this "new" paragraph (2) in effect delayed by years the Employment and Social Security Committee's own employment protection plan – including REDUNDANCY provision, therefore I believe we, as a Government, have failed to provide effective protection and should therefore recognise this by ensuring that the Jersey workers are provided for in a manner no less favourable than their UK or Isle of Man colleagues.

Therefore I believe, because of this period of inactivity on a redundancy scheme, the States owe a duty of care, and indeed have some moral obligation to those, such as the employees of Woolworths, who are adversely effected by a decision of the UK receiver – who is making profit from the lack of protection for local workers on the Statute.

Below is an extract from the **1999** Report of the (then) Social Security Committee.

"4. Redundancy (p.31 Fair Play)

When considering the issue of redundancy, the Committee considered both the philosophy behind the awarding of redundancy payments and then the relevance of that philosophy in the Jersey workplace.

Historically, a redundancy payment is a payment made to an employee who has lost his job as a result of redundancy, and who becomes eligible for a compensatory payment based on his length of service. It is a payment made in addition to any remuneration payable under the notice provisions of the employee's contract. The policy of awarding redundancy payments was not introduced to award bonus payments to employees for long service, but rather to compensate them for the loss of their jobs.

However, some may question the need for the automatic payment of redundancy awards when redundancies occur

in a labour market such as currently exists in Jersey where demand for labour is high. Indeed, many believe that the current notice periods granted under the Termination of Employment (Minimum Periods of Notice) (Jersey) Law 1974 were drafted in recognition of the fact that there are no redundancy provisions under Jersey law.

The Committee believes, in principle, that a redundancy policy should form part of any employment law framework that is designed to address the 21st century. It believes that any provisions that are introduced in relation to redundancy and length of service in Jersey should be calculated against what is felt to be best in Jersey's interests, and after a fresh comparison of what is happening in other jurisdictions. Currently there is no evidence of large numbers of redundancies in Jersey. Most people who are made redundant appear to find employment fairly quickly, and the Committee believes that problems relating to age discrimination or the requirement to re-skill are best addressed as discrimination or "lifelong learning" issues.

However, although Jersey's labour market is currently buoyant, the situation may not continue. Even now if businesses close in certain industries where there is little or no further demand in the Island for the skills of those made redundant, genuine hardship can result. In addition, the situation may well change if the skills needs of the Jersey economy were to radically alter, if the economy were to decline or "outsourcing" and rationalisations were to noticeably increase as a result of business competition, population policies etc. Therefore, the Committee feels that provisions to provide for employees who are made redundant should be introduced in recognition of the fact that employees can suffer hardship as a result.

The Committee proposes that a redundancy policy should be introduced with redundancy payments based on a scale based on length of service. As part of its philosophy of making any legislation easy to understand and workable, the Committee would envisage the length of service scale to be applied in redundancy situations being the same as that applied in unfair dismissal cases for length of service awards. As with unfair dismissal claims, the redundant individual would also be entitled to the normal termination of notice payment due under his contractual terms."

EMPLOYMENT LEGISLATION

Lodged au Greffe on 20th June 2000
by the Employment and Social Security Committee

STATES OF JERSEY

STATES GREFFE

180 2000 P.99

Price code: C

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 16th March 1999 in which they approved the introduction of legislation to provide for the introduction of a minimum wage and a trainee wage and the establishment of a Jersey Advisory and Conciliation Service and an Employment Tribunal; and

1. to approve the introduction of legislation as detailed in Part Two of the report of the Employment and Social Security Committee dated 8th June 2000, to –
   (a) facilitate the introduction of the minimum wage, including provisions to introduce pay statements, and to offer protection from unfair dismissal;
   (b) establish acceptable contractual minimum standards;
   (c) revise the Industrial Disputes (Jersey) Law 1956, as amended, as described in the said Report;
2. to charge the Committee to develop such further measures as may be necessary, as detailed in Part Three of the Report of the Employment and Social Security Committee dated 8th June 2000, to deal with the issues of –
   (a) the status and activities of trade unions in the Island;
   (b) redundancy, maternity, equal pay and equal opportunities and any issues regarding discrimination in the work place;
   (c) flexible working and family friendly policies and the protection of employees involved in business mergers and acquisitions.

EMPLOYMENT AND SOCIAL SECURITY COMMITTEE

The Industries Committee sought to amend this as follows with P.183/2000 lodged on 24th October:

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

(a) *after paragraph (1) insert the following paragraph –*

(2) to charge the Employment and Social Security Committee, in consultation with the Industries Committee, as part of its first phase of new legislation as set out in paragraph (1) above, to introduce legislation, or amend existing legislation as appropriate –

(i) to provide statutory recognition and regulation of trade unions in the Island;

(ii) to provide for the regulation of employee/employer relations; and

(iii) to define and regulate legitimate industrial action.

(b) *renumber paragraph (2) as paragraph (3).*

(c) *in the renumbered paragraph (3) delete sub-paragraph (a) and renumber sub-paragraphs (b) and (c) accordingly.*

INDUSTRIES COMMITTEE

and then amended their amendment with P.218/2000 lodged on 21st November:

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS (P.183/2000) – AMENDMENT

in paragraph (a) of the amendment, for the words –

"in consultation with the Industries Committee, as part of its first phase of new legislation as set out in paragraph (1) above, to introduce legislation, or amend legislation as appropriate –"

substitute the words –

"to consult with the Industries Committee and all other interested parties, and to present to the States as soon as possible a further report and proposition addressing the appropriate level of legislation necessary to implement a balanced and effective approach to the inter-related trade union issues identified in Part Two of the report of the Employment and Social Security Committee dated 8th June 2000, and in particular –"

INDUSTRIES COMMITTEE

For Members' information I have attached further information from the aforementioned Reports of the Employment and Social Security and Industries Committees.

REPORT (of the Employment and Social Security Committee)

PART ONE

1. The history

In 1997 the Employment and Social Security Committee ("the Committee") took over responsibility for industrial relations from the former Industrial Relations Committee. In November of that year the States approved the Policy and Resources Committee's proposition, which included action to be taken by the Committee to develop an industrial relations strategy.[2] In addition to this initiative, the Committee was also charged in that same debate with introducing minimum wage and maternity policies for the Island.

2. The minimum wage and "Fair Play in the Workplace"

Minimum wage

In 1997 the Committee had already commissioned some research into the need for and the impact of a minimum wage policy in the Island. The result of that research and extensive consultation was placed before the States in a report and proposition that was debated in March 1999 (P.227/98). During the debate the States voted not only in favour of the introduction of a minimum wage policy but also the establishment of an ACAS style advisory and conciliation service to be known as the Jersey Advisory and Conciliation Service (JACS), supported by a Tribunal type service and a consultative body to be known as the Employment Forum. The draft for the Minimum Wage Law was subsequently sent to the Law Draftsman, who has indicated that the Law cannot be effectively implemented until such time as basic employment legislation supporting it and also a system to deal with its enforcement are in place.

"Fair Play in the Workplace"

The Committee responded to the request for improved employment legislation by producing a comprehensive publication, "Fair Play in the Workplace" ("Fair Play"), which was circulated Islandwide to inform the debate. This continued throughout last year with numerous consultative meetings and seminars. The publication aimed to –

- promote modern employment relations practices in the Island;
- outline the issues commonly affecting employers, employees and trade unions;
- ask Islanders' views as to whether or not change or improvement was needed in workplace practices to take the Island into the 21st century and beyond.

3. The focus

Three clear messages were given in the Fair Play document and referred to throughout the consultation process. Those were that –

- "The Committee firmly believes that fair play in the workplace is enhanced by a partnership approach underpinned by a legal safety net of rights, responsibilities and protections. Jersey cannot justify remaining one of the few states that denies its citizens such basic rights as protection from unfair dismissal and freedom from discrimination. At the same time we should not become as heavily regulated as some other states within Europe and elsewhere. A sensible balance needs to be struck."[3]

- "The purpose of the consultation process is to reach consensus in our society on a legal framework which will provide standards of decency and fairness in the workplace but not undermine the social and economic benefit that we have from a healthy economy and full employment."[4]

- "Jersey's existing employment laws are out of date, fragmented and ineffective. There is a pressing need for a workable legislative framework which will reflect the Island's particular circumstances and introduce rights and responsibilities both for employers and employees……. the employment relationship is now highly regulated and becoming more so, particularly in Europe. This poses a problem for small jurisdictions like Jersey which do not have the infrastructure required to support such legislation."[5]

These statements present an enormous challenge and the task ahead should not be underestimated. The survey results and consultation showed that a large majority of Islanders want to see a new employment law in Jersey. It should be remembered however that other jurisdictions worldwide have taken 20 – 30 years to establish their infrastructures of employment legislation. Jersey cannot catch up overnight and nor would it be right for the Island to imitate the types of legislation found in larger jurisdictions.

When formulating these proposals the Committee has attempted to follow the guiding principles, as stated in Fair Play[6], that any new employment legislation –

- is easily understood;
- is effective in tackling the real problems;
- supports cohesion in the workforce;
- lays down clear standards of decency;
- supports a competitive economy;
- is affordable.

4. Trends for the 21st century

Any new legislative structure has to be designed to suit the workplace of the 21st century. The following changes that are taking place in the workplace in Jersey and throughout the world were considered by the Committee when formulating these proposals –

Globalisation

Worldwide there is a definite move towards the internationalisation of corporate structures. Jersey already has many businesses with international connections and the widely divergent gap in the Island's employment standards compared with that of other jurisdictions with whom the Island works is not easy to explain. For some, there may be attractions in setting up businesses in an unregulated environment. However, as has recently been seen in the Finance Sector, there is an expectation amongst OECD countries that the Island should apply decent standards in all its dealings.

Equally, as an island that relies on imported labour, the Island has to address the needs of those who come here to work from other jurisdictions, whether they be seasonal or employed on a longer term basis.

Redistribution of labour

There is a growing move away from traditional industries. Growth is generally apparent in the service industries

such as leisure and finance, whilst there is a marked decline in manufacturing industries, which are becoming increasingly automated. Locally these have had their effect and there is little doubt that e-commerce developments will also have a considerable impact on the workplace.

Recruitment/Training

Growing importance is being given to recruitment and training procedures as these can prevent many problems from arising later in employment relationships.

Greater emphasis is also being placed on the training and development of staff. There is a recognition of the need to improve skills in all sectors as low skilled work diminishes, computerisation expands and global competitiveness increases. Most enlightened firms recognise that a sound industrial relations policy helps increase productivity and profitability.

Flexibility

There is an increasing trend in the need for both business managers and staff to be flexible in the way they work and approach their work. Such flexibility is reflected not only in the variety of arrangements now made concerning the hours that people work, but also in the changes caused and likely to be caused by the impact of information technology.

Female participation

The number of women in the workforce is increasing – Jersey already has the highest female participation rate in Europe.

Consultation

Increasingly, the need for consultation between all partners in the employment relationship is being recognised. Consultation fosters partnership within relationships and can help focus business direction, as well as being a considerate way of advising those to be affected by business change. Some jurisdictions make consultation between the parties obligatory in some business circumstances.

5. The framework

In determining how best to establish the legal framework, the Committee has borne the following advice in mind –

- take a step-by-step approach which adheres to an agreed agenda to give all parties time to prepare for change;
- consult with all interested parties at each stage of the development of the legislation;
- use codes of practice in conjunction with and supported by legislation (the use of codes of practice without a legal framework to support them is not likely to be effective);
- use lay members in arbitration and tribunal procedures as such people can have broad background experience of the "local" workforce and a non-legalistic approach to the issues at hand;
- choose suitable remedies that will be both workable and used when legal enforcement is required;
- avoid heavy-handed legislation as it can have a detrimental and stifling effect. Small pieces of disjointed legislation can also be ineffective.

In the report that follows, the Committee is proposing a framework which sets minimum standards reflecting the

views expressed during the consultation process as acceptable and representative of what might reasonably be expected as part of any working relationship in the 21st century.

Throughout the consultation process it was clear that Islanders wished to retain their freedom to negotiate their own contractual terms. Indeed that is the default position in Jersey law where the maxim "*la convention fait la loi des parties*" so long as "*elles ne contiennent rien de contraire aux lois et aux bonnes moeurs, et qu'elles interviennent entres personnes capables de contracter*" is still followed in the courts so far as contractual matters are concerned (i.e. the agreement made by the parties is binding upon them – so long as it contains nothing illegal or immoral and the parties themselves are legally capable of entering into a contract – Pothier.) In reality the benchmarks provided by the proposed legislation should provide a default position for those entering into an employment contract, but nothing should prevent the parties from negotiating their own better terms.

6. Who is the legislation to protect?

Jersey has a wide selection of employers and working groups to which the new legislation will apply, and the Committee is aware of the need to assess the effect and workability of its proposals with each group. It recognises that careful consideration will have to be given to their likely impact as the details develop during the law drafting stages.

The Committee believes that it is important to continue its consultation with all concerned, and it has already established an Employment Forum made up of nine members representative of the community: three employers, three employee and union, and three independents, through whom consultative meetings will be arranged at which views can be expressed by all interested parties and organisations.

7. "Fair Play in the Workplace"

"Fair Play in the Workplace" listed the following points for consideration –

- terms and conditions of employment;
- equality of opportunity and treatment, including discrimination;
- maternity arrangements;
- payment of wages and salaries;
- termination of employment, including dismissal; redundancy and the transfer of undertakings;
- flexible working practices;
- advice, conciliation and enforcement (the Jersey Advisory and Conciliation Service (JACS) and an Employment Tribunal);
- trade unions and collective employment rights and obligations.

The sections which follow in Parts Two and Three of this Report demonstrate some of the thinking and reasoning that has evolved around each topic and which has led to the formulation of the proposals put forward by the Committee. The Committee has sought to satisfy the criteria it set itself in the Fair Play document[7] whilst also taking heed of the results of the Fair Play survey and the consultation meetings, the findings of its international research and the recommendations it received on what approaches did or did not work when establishing a new legal infrastructure.

In addition, the Committee believes that it is inevitable that the needs and desires of some sectors will be different to those of others. However, in drafting these proposals it has tried to balance those needs and to introduce the proposed legislation in a manner that will not be perceived as overtly favourable to any one group over the other.

As stated previously, the Committee believes that the new legal infrastructure should lay down a set of legal minimum standards and safeguards for all involved in the workplace whilst not stifling the Island's business economy.

8. Summary of proposals

The Committee proposes that the new infrastructure should have four components –

- **a legislative framework** that will set minimum standards by which all those in the workplace will be bound. The framework is intended to reflect common standards of decency and fairness on behalf of all parties to the employment relationship. It is **intended** to provide a sound basis of acceptable standards that will enhance and support the functioning of the Island's business community as it moves into the 21st century. The legislation is also intended to promote discussion between the parties and discourage adversarial relationships;

- **an advisory and conciliatory service**, to be known as the Jersey Advisory and Conciliation Service (JACS) which will be supported by an Employment Tribunal, in its work; (As has been stated previously the States have already approved the setting up of these bodies and proposals in connection with their establishment and functioning do not form part of this report.)

- **an Employment Handbook** which will contain advice and guidelines on all aspects of the employment relationship; good practice and the effect of the new laws that are proposed. Where appropriate the guidelines will be referred to by those who ultimately work for JACS and the Employment Tribunal as evidence of what constitutes good practice. It is proposed that this document will be a "living document" which will be continuously monitored, reviewed and updated as required.

- **an Employment Forum** consisting of nine representatives from employee and employer groups and independents.[8] The Forum has already been set up to be responsible for consulting all interested parties on all major issues in connection with the Minimum Wage Law and the new employment legislation. It will also be responsible for making recommendations to the Committee as a result of evidence and opinion received during its consultations. The Committee will have a duty to explain to the States why it has not followed the recommendations of the Employment Forum in any policy it brings forward to the States for debate if this is shown to be the case.

As far as the legislation framework is concerned, the Committee proposes that it be introduced in two distinct phases and within those phases the Committee is proposing that the legislation be introduced in further tiers. The phases will approximate with **Parts Two and Three of this Report and are summarised below –**

- **the first phase** should have regard to the minimum wage legislation already approved by the States and therefore –

  (i) include legislation relating to payment of wages issues and unfair dismissal (including protection from dismissal on pregnancy-related grounds) and the establishment of JACS and its supporting enforcement body all of which, as the Law Draftsman has said, will be fundamental to the efficient functioning of the Minimum Wage Law;

  (ii) introduce legislation focusing on the contract of employment. Such legislation should emphasise the key rôle the parties themselves play in the negotiation of their own contracts and should establish the minimum standards that the Committee has recommended, such as one obligatory rest day per week and two weeks' annual paid leave as well as the minimum wage;

  (iii) introduce legislation to revise the Industrial Disputes (Jersey) Law 1956 in accordance with the

proposals outlined on page 24 of this Report [nos. (a); (b); (c)] with the intention that an enhanced system of dispute resolution will result from the use of the Law and enable JACS to function more effectively.

- **the second phase** should include measures as deemed necessary in dealing with the issues of –

  (i) trade union;

  (ii) redundancy;

  (iii) maternity and equal pay and equal opportunities as well as all other discriminatory issues in so far as they have not already been dealt with or are to be dealt with by any other Committee;

  (iv) flexible working and family friendly policies such as unpaid leave for domestic emergencies;

  (v) employees involved in merger or acquisition situations.

For various reasons, some of which are listed below, the Committee does not think that it is feasible or necessary to address all the issues discussed in the Fair Play document coincidentally.

- Firstly, it does not wish to overburden employers with new legislation, for it believes that change must be assimilated gradually if it is to be acceptable and workable and enforceable. The Committee also believes that there is a vital educative function to be performed if the proposed changes are to be implemented smoothly, and it proposes that the educative programme will run whilst the legislation is being drafted so that Islanders are well aware of the changes to be made, why they are being made and how they will impact.

- Secondly, the Committee has to balance the likely resource and manpower implications of the proposed changes against the availability of such resources. However the Committee believes that it is of paramount importance that the new laws are monitored and enforced otherwise they will lose credibility. In addition, it wishes to avoid overburdening the JACS service as a result of too many issues being addressed at once.

- Thirdly, the Committee believes that protection from discriminatory practices based on race and age may well be granted in the workplace as a result of new overall policies to be promoted by the Policy and Resources Committee. The Committee therefore feels that the prime responsibility for strategy and policy on all discriminatory issues should rest with the Policy and Resources Committee and that an overall approach, co-ordinated by that Committee, would achieve a better and more sensible result.

- Fourthly, the Committee hopes that acceptable and decent contractual standards and good working practices will gradually become the norm without the need for overpowering legislation if the proposed new minimum standards and good practice guidelines are put in place, backed up by an effective dispute resolution system.

However, most importantly in the Committee's view, the States have already approved the introduction of a minimum wage policy in the Island. The Minimum Wage Law will of itself be a major piece of legislation. The Committee has always maintained that the introduction of the minimum wage should be an integral part of the new employment law infrastructure. For example, some of the strongest messages received during the consultation period were requests to introduce pay statements and to afford protection from unfair dismissal. Accordingly, if legislation on all these issues is introduced as a priority Islanders will already have a considerable amount of new legislation to contend with. They will, however, see the introduction of legislation dealing with some of the key issues highlighted in the survey and minimum wage legislation which is long overdue.

PART TWO

Issues proposed for Phase One of the new legislation

1. Terms and conditions of employment (pp.15-16; 52-54 Fair Play)

The contract

During the consultation period it became apparent that people still view the employment contract as the anchor of any employment relationship. It was often stated that the parties should be free to negotiate their own terms without government interference and that the better use of contracts would ensure greater clarification of both the employer's and the employee's rights and responsibilities. There was a conviction that if better enforcement procedures existed then more could be achieved through the use of contracts alone without the need for weighty legislation.

As a result of the international research it carried out, the Committee learnt of the particular emphasis given to the rôle of the contract in New Zealand employment legislation. The New Zealand Employment Contracts Law 1991 emphasises the importance of the parties' freedom to negotiate their own contract terms, subject to some statutory minimum standards (e.g. holiday pay). The Committee believes that an approach similar to that adopted in New Zealand is one that Islanders would find acceptable. It would satisfy the wishes of those who emphasised the need for individuals to retain the right to negotiate their own contractual terms, but it would also allow for minimum standards to be set in law. This approach appears also to marry well with both the Jersey customary law maxim referred to earlier and the States decision to approve a minimum wage policy. (The setting of minimum contractual standards in law is not in itself uncommon – the setting of a minimum wage, for example, is the setting of a minimum standard.)

In the following two paragraphs the Committee proposes two other minimum standards that it considers desirable for Jersey.

Provisions for a weekly day off and paid annual leave

It is quite clear that anyone working excessive hours will not perform to the best of their ability and indeed accidents may occur. The Committee therefore recommends that every person be entitled to one rest day per week. Provision for this should be included in the contract. The Committee appreciates that for some groups alternative provisions may be necessary, for example for part-time workers who work seven days per week or shift workers on seven-day shifts.

However the principle of officially allowing for rest time on a weekly basis should be recognised. The Committee does not propose that the day be specified in law, though most contracts would probably include Sunday as the rest day. The law would have to allow the contracting parties some flexibility, especially as many jobs require Sunday working and different religious beliefs recognise different holy days.

In addition, the Committee believes that all workers should be entitled to a minimum of two weeks' annual paid leave, such leave to be taken on a pro rata basis if a period of less than one year is worked.

Review procedures

It is widely acknowledged that some form of procedure is needed in the workplace to address situations where work-related issues of concern to either party arise. Such procedures are usually termed "grievance" or "dismissal" procedures. The Committee is of the view that all employers need to have review and consultation procedures as a matter of good employment practice, and accordingly a clause referring to the employer's review procedure should be included as a minimum standard in the employment contract. The Committee does not propose to dictate the form of procedure to be followed. It recommends only that it will be necessary for an employer to establish a fair review procedure that is workable for the size and type of business concerned and will enable either party to address issues of concern in a reasonable manner. A failure to follow a fair review procedure will be a factor that will be taken into account when assessing whether any action taken was fair. The Committee does not propose to introduce detailed legislation on review procedures and consultation requirements, but advice on the setting-up and use of different forms of procedure appropriate to the size of business and on the

use of consultation procedures will be provided in the Employment Handbook.

The Committee intends that conciliation will be available through JACS when review discussions break down, as there is evidence to prove that conciliation can radically reduce the number of claims brought to a tribunal. For example, in Spain, the number of unfair dismissal claims settled by conciliation is estimated to be between 60 per cent – 70 per cent.

2. Payment of wages and salaries (pp.28-30; 51 Fair Play)

The methods by which workers are paid have grown in complexity over the years. The Payment of Wages (Jersey) Law 1962 was designed to ensure that workers received the full benefit of their wages.

Currently Jersey law does not require an employer to issue an employee any regular, standardised record showing how his or her pay is calculated. In order that employees know how their pay is calculated, the Committee is proposing that a pay statement should be mandatory and should include details of –

- the gross amount of the wages or salary;
- the amounts of any fixed deductions and the purposes for which they are made (e.g. social security; pension);
- the amounts of any variable deductions and the purposes for which they are made;
- the net amount of the wages and the salary payable (including details of a bonus; profit share; overtime);
- the method of payment (e.g. paid in cash; bank standing order);
- the pay reference period.

There was a call for specific legislation to deal with the issue of unauthorised deductions from wages during the consultation period. The issue of guarantee payments (whereby a worker is entitled to receive a fixed level of remuneration when he is contracted to be at work but there is no work) also received support during the consultation period, though to a lesser extent. The Committee believes that such issues, along with specific provisions dealing with cash shortages in the retail industry, will need to be addressed in conjunction with the minimum wage proposals for, without clear legal guidelines concerning them, that Law will not function effectively. (e.g. An employee may not be able to calculate whether he has received the minimum wage if his employer is not obliged to give him a detailed pay statement.)

3. Termination of employment (pp.31-36 Fair Play)

There are several ways in which a contract of employment can be terminated. Everyone is familiar with the concept of notice provisions in a contract which enable either party to end the employment contract upon the giving and serving of the relevant notice. However, employment contracts can also be terminated both fairly and unfairly; by reason of redundancy and as a result of company mergers or acquisitions. No legislation exists in Jersey dealing with redundancy and unfair dismissal, and only limited protection is given in transfer and merger situations.

Termination in accordance with the contractual notice period (p.32 Fair Play)

The minimum periods of notice to be given by employers or employees to terminate an employment contract under the provisions of the Termination of Employment (Minimum Periods of Notice) (Jersey) Law 1974 are roughly comparable with those of the United Kingdom and the Isle of Man, but on balance considerably better than those in Guernsey. The Committee does not therefore propose any changes to the current provisions regarding termination of notice periods.

Unfair dismissal (pp.32-34 Fair Play)

The consultation period showed that the need for legislation offering protection from unfair dismissal was considered a very high priority. The Committee has been advised by the Law Draftsman that such legislation is needed in order to support the enforcement of the forthcoming minimum wage legislation. It is also needed to underpin both current and future legislation relating to employment issues.

If trends elsewhere can be relied upon, it is anticipated that many more claims will be brought on the ground of unfair dismissal than on any other issue.

The Committee acknowledges that there are some recognised circumstances in which dismissals should automatically be treated as unfair and it proposes that these be specified in the law. For example dismissal on the grounds of union membership or activities, and pregnancy or pregnancy-related issues, are normally accepted as automatically unfair. In contrast the dismissal of a temporary employee recruited on a short-term contract to do the job of someone on maternity or extended sick leave, or a dismissal on the grounds of misconduct or incompetence can, depending on the circumstances, be regarded as fair. The Committee proposes that any such legislation should be supported by good practice guidelines to be contained in the Employment Handbook.

After much consideration, the Committee has taken the view that an unfair dismissal is unfair whenever it occurs, and accordingly it does not propose to recommend that a qualifying period be served in unfair dismissal situations.

Penalties

The Committee wishes to emphasise the importance to be attached to the decision that must be taken on the type of penalty or sanction to be levied in cases where an unfair dismissal is proven to have occurred. Two very different approaches can be used by way of alternative solutions –

In unfair dismissal cases the United Kingdom system grants a discretion to members of Employment Tribunals to make compensatory awards to individuals who are found to have been unfairly dismissed. As a result of recent changes to the United Kingdom law, the maximum award payable to any one individual has been increased to £50,000 with effect from 25th October 1999. It should be noted that the compensation ceiling cannot be exceeded. Debate over the extent to which a dismissal is unfair can become lengthy and costly in terms of both court efficiency and legal representation, as the parties seek to prove the reasonableness of their respective cases.

By way of comparison, Guernsey has adopted a simpler approach to the unfair dismissal issue which, although limited, is perhaps a clear-cut way of dealing with the issue in a small jurisdiction. The Employment Protection (Guernsey) Law 1998, which came into effect in January 1999, introduces the concept of unfair dismissal into the Bailiwick. Under the law, unfair dismissal cases are heard by a sole adjudicator. If the adjudicator decides that an unfair dismissal case is proven, the compensation payable to the employee is fixed at a rate of three months of the employee's salary. There is no additional award to reflect the number of years' service completed by the employee, but this sum is paid in addition to any monies owing to the dismissed employee under his contractual notice provisions. There is no appeal based on the decision unless it is on a point of law, and by virtue of the fixed penalty system the level of compensation payable is not affected by any argument as to the reasonableness of the claim.

The Committee proposes that a system offering a fixed penalty sanction based on a multiplier of an employee's monthly salary be introduced so far as all forms of unfair dismissal are concerned, with an additional award to be made based on a fixed scale relating to the number of years' service completed by an employee. The Committee accepts that this course of action, as in Guernsey, will not allow for debate as to the level of the compensation based on the reasonableness of the claim, but it will take recognition of an employee's length of service. It is proposed that any such awards would be in addition to any monies due to the claimant under his contractual notice provisions. (i.e. someone who was unfairly dismissed and who had an agreed one-month notice period and had worked for two years for the company would be entitled to a total of four month's salary (one month's contractual notice pay and the three months' unfair dismissal award) plus the scale payment for longevity of

service).

4. JACS/Employment Tribunal (pp.43-44 Fair Play)

The States agreed at the time of the debate on the minimum wage proposition that an independent advisory/conciliatory/enforcement system should be established. The Committee has been researching the various approaches in other jurisdictions that have been adopted, with the intention of setting up the JAC's service this year.

There can be no doubt of the importance of the rôle of both advisory and conciliation services at all stages in the employment relationship, whether advice be sought prior to the drawing-up of a contract, during its existence or after its termination, or just generally in relation to good employment practice.

The rôle to be played by JACS' enforcement body is equally important. Lack of enforcement of the Island's current employment legislation was seen as a major concern in the Fair Play consultation exercise. It should be remembered that the majority of all claims arising out of employment issues will be heard through the JACS system and its enforcement body, and not through the court system. It is envisaged that appeals will be heard by the Royal Court only in specific circumstances.

It has been recognised that this new service will be able to operate more effectively if the current Industrial Disputes (Jersey) Law 1956 is revised as part of an enhanced dispute resolution system in which JACS would play a major part[9] and this has been discussed more fully in the next sections.

The Committee is concerned to encourage resolution of disputes at all stages between the parties, supported where necessary by JACs. It may be that if legal representation were to be allowed at Employment Tribunal hearings, the Tribunal members would not be granted the power to award legal costs to anyone so represented. This approach was adopted by the Guernsey authorities when they set up the framework for the hearing of unfair dismissal claims in the Island's new Employment Protection (Guernsey) Law 1998, and the Committee believes that it would be one way of trying to ensure that the Jersey system operates as quickly and straightforwardly as possible. During the consultation period, the Committee received pleas that it avoid creating a legal framework that would give rise to a "lawyer's charter". The Committee is aware that many companies and individuals already seek legal advice on the drafting of their contracts of employment, for it is generally known that there is little employment legislation in the Island and many people check to see what provisions are in place and seek help drafting their contracts accordingly. The Committee acknowledges that any new legislation will give rise to greater consideration of all employment issues, but advisory services will be available through JACS.

It is obvious that there is a resource implication to be considered if the JACS/Employment Tribunal system is to work efficiently, and if any laws that are introduced are to be enforced and respected. This matter was addressed in the proposition and report on the minimum wage that went to the States and is referred to later in this document. However, the experience of Jersey's Industrial Relations Officer and that of ACAS style bodies in other jurisdictions suggests that a professional advisory/conciliation service is a worthwhile investment. It was also apparent from the Fair Play consultation that Islanders want to see an increased advisory and conciliation service with a supporting enforcement body in place as soon as possible. The Committee therefore proposes that the work of the Industrial Relations Officer should be absorbed by JACS and that the post in its current context should cease.

The Committee wishes to ensure that the services offered by both JACS and the Employment Tribunal will be as efficient as possible. As part of that process, the Committee will be looking at measures to prevent cases based on tactics rather than genuine argument being brought to hearing. In addition the Committee believes that the system will function most effectively if new legislation is introduced in phases, thereby allowing Islanders time to gradually familiarise themselves with the new provisions and their purpose.

Resource implications

The likely running costs of both JACS and the Employment Forum to cover all advisory, conciliation, arbitration and appeals work under all aspects of the proposed employment law framework, have been budgeted for within

the Employment and Social Security Department's year 2000 budget in accordance with the minimum wage report and proposition approved by the States.

5. Trade Union issues (pp.45-47 Fair Play)

The Committee wishes to deal with the trade union issue in the same way that it has dealt with all other aspects of the employment infrastructure, in a simple, straightforward manner, by introducing minimum standards and building on good practice to encourage fair play in the workplace.

It fully recognises the concerns felt by many about the lack of local laws or regulations dealing with either the establishment of, or the rights and responsibilities of, the Island's trade unions, other than the common law right of association which is granted so long as the association is not for illegal purposes.[10] However, having carried out considerable international research on dispute resolution and enforcement issues, the Committee is persuaded by the growing opinion which highlights that confrontation is neither a civilised nor beneficial way to resolve a difference or a dispute, whether it be a collective or individual concern. Instead, throughout the world, different jurisdictions are promoting systems to help prevent disputes escalating, and to assist with the facilitation of discussion and negotiation, with the intention that the majority of disputes will be resolved using conciliatory methods without recourse to enforcement legislation.

Introducing legislation is rarely a quick procedure, for apart from any consultation process the law drafting process itself takes time, and legislation then has to go before the States for approval and then to the Privy Council in London for sanction. The Committee therefore believes that detailed trade union legislation would take a long time to introduce into the Island, and it would be an enormous challenge to introduce it as simple, workable and accepted by all.

It is for this reason that the Committee has looked again at the Island's Industrial Disputes Law. Although the Law was written in 1956 and its style is somewhat convoluted, the Committee believes that it is far from redundant. It does, in fact, specifically provide for a system to manage the resolution of collective disputes which is beyond anything provided for within the United Kingdom system[11].

In brief outline the Law provides for the appointment of an Industrial Disputes Officer, who is given power "to take any steps which seem to him expedient to promote a settlement" of any dispute or issue that is reported to him (Article 7). This Article enables the Industrial Disputes Officer to refer matters for conciliation, mediation and arbitration.

The Law also establishes an Industrial Disputes Tribunal which can be constituted as a final forum to make a binding decision on any collective issue that comes before it for adjudication.

Article 10 of the Law provides that the Industrial Disputes Officer must refer any matter that is reported to him to the Industrial Disputes Tribunal for adjudication within fourteen days of its being reported.[12] This provision effectively allows the Industrial Disputes Officer, if he deems it appropriate, to implement a "cooling-off period", during which time attempts at settlement can be made. Article 10 also grants the Industrial Disputes Officer the power to extend the fourteen-day period by a further fourteen days "if he thinks it desirable to do so".[13]

The Committee believes that an inhibiting factor in the use of the process established under the Industrial Disputes Law has been the fact that the Industrial Disputes Officer has to be a States member, and it is therefore proposing to remedy this situation. It also believes that if two other amendments were made to the Industrial Disputes Law, the result of a combined use of the JACS service and the Law would be the creation of an enhanced and effective system of dispute resolution. The proposed amendments will be described shortly, but before doing so it is worth noting the results of the Committee's research in Guernsey.

Guernsey has, over a period of time, developed a very successful industrial relations strategy based on conciliation and arbitration. The Island has no specific trade union legislation, but it does have an Industrial Disputes Law that is not dissimilar to the Jersey one. The Guernsey Law creates the post of an Industrial Disputes Officer and establishes an Industrial Disputes Tribunal. The Industrial Disputes Officer has various powers to deal

with matters that are notified to him, and he can refer matters to the Tribunal, which acts as an adjudication and decision-making body if needed. The Island also has two Industrial Relations advisers who offer advisory and conciliatory services. It is apparent that all parties to workforce arrangements in the Island, whether they be union, employer or employee, both trust and use the facilities available to them for advice, consultation, conciliation, mediation and arbitration purposes, and the Tribunal is called only infrequently as a result of the success rate achieved by the conciliation services.

The Committee has come to the conclusion that despite the similarity in the Island's two Industrial Disputes Laws, there are some key differences which have probably resulted in the Guernsey Law being respected as part of a workable system, whereas the Jersey Law does not appear to be so. The first is that the Guernsey Law excludes States members from holding the posts of either the Industrial Disputes Officer or Deputy, whereas the Jersey Law requires the Industrial Disputes Officers to be States members. Secondly, the Guernsey Law allows the Industrial Disputes Tribunal to adjudicate upon a dispute once industrial action has commenced or during such action, whereas the Committee believes that Article 10 of the Jersey Law prevents the Industrial Disputes Tribunal from adjudicating upon a dispute in such circumstances.

Therefore, as an initial stage, the Committee proposes that the Industrial Disputes (Jersey) Law 1956 be amended as part of Phase One of its proposals to include the following –

(a) that States Members be precluded from holding the posts of Industrial Disputes Officer and Deputy. The Committee believes that such a step would grant the postholders greater independence;

(b) that the Industrial Disputes Officer be granted authority to offer his services in any situation where he apprehends the possibility of a dispute in addition to his current authority to become involved only when a dispute is reported to him;

(c) that Article 10.3 of the current Law be repealed so that the Industrial Disputes Officer can still refer a matter to the Industrial Disputes Tribunal once industrial action has started, and that the Tribunal can continue to hear a dispute if such action starts after the hearing has commenced.

The Committee **does not** believe that any referral for conciliation by the Industrial Disputes Officer should be compulsory. Advice has been received from the Chief Conciliator of ACAS and from other advisers that conciliation systems work best when the parties choose to use the services offered voluntarily. Trust and respect are not established if people are forced to do something against their will. Technically speaking the parties' time could be wasted if one or other were unwilling to discuss the issues and simply attended upon the conciliator with no intention of taking part in realistic discussion.

The Committee is of the view that, given time, the changes proposed above would make a major contribution to modernising employment relations on the Island and preventing strikes. The Committee is convinced that the partnership approach is a vital component in successful modern-day business relations, and it has been encouraged by the apparent growing awareness of this ethos in the Island. Accordingly the Committee firmly believes that a reasonable amount of time ought to be allowed for these various changes to take place and be assessed before any further legislation is introduced.

However, if, after a reasonable period of time, the proposed system was deemed not to be working, and it was felt that additional measures were required, then further legislation could be introduced. Any such legislation that was introduced could, for example, contain provisions dealing with ballot procedures; restrictions on the use of secondary action and the granting of workers' representation rights. However the Island would be starting from the beginning, and provisions regulating the establishment of trade unions in the Island would also need to be included. Trade union legislation is currently being expanded in the United Kingdom, and in Europe generally there is a move towards the establishment of "Works Councils". This development is adding another dimension to the whole area of trade union legislation which is already complex.

States Legislation Programme 2000 – 2001

The Law Draftsman has advised that the above Programme could accommodate the legislation proposed for the first phase.

PART THREE

Proposed issues to be encompassed in Phase Two of the new legislation

1. Equality of opportunity (pp.19-21 Fair Play)

Many people probably assume that men and women receive equal pay for equal work already. However there is no local legislation to this effect, and as a social concept it is probably fair to say that the principle of equal pay for equal work has wide support. The intention of such legislation would be to provide equal pay and equal opportunity for both men and women and to prevent discrimination as regards their terms of employment.

The Committee believes that this issue is intrinsically related to other discrimination issues. Indeed, the Equal Pay Act was implemented in the United Kingdom at the same time as the statutes dealing with sex and race discrimination. However, it should also be noted that equal pay is not only an issue between men and women. It can also be an issue between people of the same sex doing the same job, and it can also be a productivity issue. [14]

The Committee is conscious of the fact that the issue of equal pay was regarded, quite rightly, as a high priority in the survey. However, whilst acknowledging that the issues of equal pay and equal opportunity do need to be considered, the Committee has taken the view that they will only be effectively addressed as part of an overall discrimination policy. (see “Discrimination” below). In support of this view, the Committee has noted that the Equal Opportunities Commission is of the opinion that experience in the United Kingdom has shown that the Equal Pay Act would have been more effective if it had formed part of legislation dealing with both sex and race discrimination.

2. Discrimination (pp.19-24 Fair Play)

Discrimination may be defined as “detrimental treatment received as a result of something beyond the individual’s control”.

The survey and consultation results indicated that only a small majority of islanders felt that an anti-discrimination law was a priority. Discrimination on the grounds of age was the area of most concern. That fact in itself raises some separate issues, and it may be that new States policies in connection with manpower will be adopted to indirectly help prevent some of the discriminatory problems based on ageism that arise in the workplace.

However, it was also recognised that discrimination, whether it be on the grounds of sex, race, disability, gender, religion or age is not an issue that occurs only in the employment relationship. The Policy and Resources Committee, through the Legislation Committee, has already commissioned a working party on race relations, with a view to a Race Relations Law being drafted during 2000.

It is known that the draft proposals of that working party include reference to the employment scenario.[15] As mentioned above, the Equal Opportunities Commission is of the view that matters such as sex and race discrimination should be dealt with coincidentally with equal opportunities issues, and this view was also voiced during the consultation period. The Committee believes that it would be possible for any anti-discrimination legislation dealing with discrimination based on the grounds of sex or race to be extended to deal with discrimination on the grounds of disability. The Committee has noted that the grounds upon which it is unlawful for an employer to discriminate against applicants and employees in each of the United Kingdom Sex Discrimination Act 1975; the Race Relations Act 1976 and the Disability Discrimination Act 1995 are the same.

The Committee is convinced that legislation dealing with anti-discrimination issues in the workplace should be dealt with as part of a broader anti-discrimination policy. It believes that work on such a strategy has been

effectively started by the Policy and Resources Committee through its instigation of the forthcoming Jersey Race Relations Law and the establishment of the Racial Discrimination Forum. Accordingly, it strongly suggests that the possibility of extending this Law to cover sex and disability discrimination should be addressed prior to the Committee embarking upon a separate policy to deal with discriminatory issues, other than race, in the workplace only. However, if this proposal is not found to be the most logical approach, the Committee would wish to reconsider the position in relation to discrimination in the workplace in due course.

3. Maternity (pp.25-27; 55 Fair Play)

As part of the States' Strategic Policy Review and Action Plan the States, in principle, agreed to the introduction of a maternity policy throughout the Island to match that offered by the States of Jersey. Since that debate the States' employees maternity policy has now been consolidated across all sectors, and entitles a female States' employee who has been employed on a permanent basis for a period of at least one year (including a satisfactory probation period) to have 18 weeks' maternity leave and to receive maternity pay at a rate of 90 per cent of her salary for a period of 12 of the 18 weeks. Her employer's liability (i.e. the States of Jersey, as her employer) is to make up the difference between the amount she receives by way of Social Security maternity benefit and the figure representing 90 per cent of her earnings.

During the consultation process, the Committee heard of the genuine concerns felt by many small businesses that they simply could not afford to pay an employee maternity pay as well as pay for a replacement during the employee's period of maternity leave.

Another real fear is the detrimental impact that might result if a maternity policy is introduced in isolation. Opinion demonstrated that unless some anti-discrimination provisions are introduced, some businesses may simply avoid employing women of childbearing age. Also, until protection is afforded by an unfair dismissal law, women might more readily be dismissed by their employer once they announce their pregnancy.

Having considered all the above issues, the Committee recommends that any maternity policy be introduced in phases, so as to allow the business community time to adapt to its inevitable impact. However, it does believe that legislation protecting a woman from dismissal on the ground that she is pregnant or for any other reason connected with her pregnancy should have priority. Accordingly, measures are proposed to grant such protection in the Committee's unfair dismissal proposals.

In addition, although the Committee does not propose at this stage to introduce specific legislation guaranteeing a woman a right to return to work and to the same or a similar job, the Committee believes that its unfair dismissal proposals will, to a large extent, result in the creation of such a situation.

An employee's eligibility to receive maternity pay and paid time off for ante-natal care are issues that the Committee proposes be addressed after the unfair dismissal provisions are in place. The Committee believes that the issue of a woman's right to return to her former job at the end of her maternity leave period is in reality a discrimination issue. In addition, women may want to reduce to part-time hours when they return to work from maternity leave. Accordingly the Committee feels that any legislation specifically dealing with these two issues should be introduced at the same time as any legislation dealing with discrimination, part-time and flexible working issues.

4. Redundancy (p.31 Fair Play)

When considering the issue of redundancy, the Committee considered both the philosophy behind the awarding of redundancy payments and then the relevance of that philosophy in the Jersey workplace.

Historically, a redundancy payment is a payment made to an employee who has lost his job as a result of redundancy, and who becomes eligible for a compensatory payment based on his length of service. It is a payment made in addition to any remuneration payable under the notice provisions of the employee's contract. The policy of awarding redundancy payments was not introduced to award bonus payments to employees for long service, but rather to compensate them for the loss of their jobs.

However, some may question the need for the automatic payment of redundancy awards when redundancies occur in a labour market such as currently exists in Jersey where demand for labour is high. Indeed, many believe that the current notice periods granted under the Termination of Employment (Minimum Periods of Notice) (Jersey) Law 1974 were drafted in recognition of the fact that there are no redundancy provisions under Jersey law.

The Committee believes, in principle, that a redundancy policy should form part of any employment law framework that is designed to address the 21st century. It believes that any provisions that are introduced in relation to redundancy and length of service in Jersey should be calculated against what is felt to be best in Jersey's interests, and after a fresh comparison of what is happening in other jurisdictions. Currently there is no evidence of large numbers of redundancies in Jersey. Most people who are made redundant appear to find employment fairly quickly, and the Committee believes that problems relating to age discrimination or the requirement to re-skill are best addressed as discrimination or "lifelong learning" issues.

However, although Jersey's labour market is currently buoyant, the situation may not continue. Even now if businesses close in certain industries where there is little or no further demand in the Island for the skills of those made redundant, genuine hardship can result. In addition, the situation may well change if the skills needs of the Jersey economy were to radically alter, if the economy were to decline or "outsourcing" and rationalisations were to noticeably increase as a result of business competition, population policies etc. Therefore, the Committee feels that provisions to provide for employees who are made redundant should be introduced in recognition of the fact that employees can suffer hardship as a result.

The Committee proposes that a redundancy policy should be introduced with redundancy payments based on a scale based on length of service. As part of its philosophy of making any legislation easy to understand and workable, the Committee would envisage the length of service scale to be applied in redundancy situations being the same as that applied in unfair dismissal cases for length of service awards. As with unfair dismissal claims, the redundant individual would also be entitled to the normal termination of notice payment due under his contractual terms.

5. Merger and acquisition of businesses (p.16-17 Fair Play)

The employees of a business that either sells or transfers its assets face the possibility of either redundancy or continued employment in the new business but perhaps on different contractual terms.

There is currently no protection in Jersey to ensure that staff who are transferred with a business do not suffer any detrimental change to their contracts. Some jurisdictions make it obligatory upon the management of the new business to continue the employment contracts of the transferred staff on either the same or better terms. Such legislation has shown that lengthy and complex legal argument can arise in connection with its application, and the Committee has been advised to avoid this type of legislation. Given the complexity of the issue, the Committee does not consider it is a high priority at this stage to provide such protection in law in the Jersey workplace where labour and skills are at a premium. However, the Committee realises that factors such as e-commerce may have a considerable impact in this area in future, and it will continue to research the issue in order to find a way of addressing it to suit Island needs.

However, the Committee does believe that provision should be made to ensure that management consults so far as is reasonably possible and in good time before a transfer takes place with staff who will be either effected by or involved in the transfer of a business or in a business where redundancies are to be made. This principle also applies to any other redundancy situation. Accordingly, the Committee proposes that guidelines on good consultative practice will be included in the Employment Handbook, although the Committee accepts that provision may need to be made for exemptions where sensitive information is involved.

6. Written statements of reasons for dismissal

There is currently no legislation requiring an employer to provide a written statement of reasons for dismissal at the time of an employee's dismissal. The Committee feels that it is good employment practice for an employer to provide such a statement if so requested by the dismissed employee.

Although the Committee does not propose to legislate on this matter, it does propose to include guidance on it in the Employment Handbook. It also proposes that a failure to issue a written statement of reasons for dismissal should be taken into consideration in any unfair dismissal claim. The Committee accepts however that there will be circumstances where an employer is unable to provide such a statement due to the sensitivity of information and it proposes that this situation should be recognised.

7. Insolvency fund (pp.32 and 36 Fair Play)

The Committee believes that an Insolvency Fund would only be necessary if a redundancy policy such as that outlined above were to be introduced, but it wishes to consult further on the issue of its setting-up. The Viscount has advised that this matter has been addressed before but that it was not progressed. The Committee understands that legislation to set up such a fund might be complex and difficult to administer.

8. Family-friendly and flexible working policies (pp.15-18 and 37-41 Fair Play)

Many flexible approaches to working are now commonly used throughout the developed world. The challenge is not to limit such opportunities where they are to the benefit of employers and their employees but to safeguard against potential misuse at the same time.

With a thriving economy and a labour shortage, the Island's business community needs to seek out means by which it can most effectively use the Island's available manpower. Flexible working practices such as flexi-time and part-time work and the extension of the retirement age are possible approaches. Another is to adopt "family friendly" policies such as those referred to below, which are in part intended to encourage women with family commitments back into the workplace.

New rights in the United Kingdom and Europe

The United Kingdom is currently introducing legislation which will put into effect the new social policies contained in directives issued by the European Union. Additional unpaid leave is granted to parents as a result of the birth or adoption of a child and leave is also to be allowed at the time of a family emergency. Hitherto there has been no legislative protection granting part-time workers the same employment rights as full-time workers. This too is to be changed by the introduction of legislation.

Protection from unfair dismissal is to be given to those who assert their rights under any of these new provisions.

It has been suggested that since Jersey has such a shortage of labour and since so many women are included in the workforce, legislation such as that referred to above ought to be introduced in the Island, especially if the employment laws that are being considered are aimed to suit changing working trends.

The Committee supports the view that all workers should be treated the same, pro rata for those working less than a full working week. However, the Committee recognises that the introduction of rights such as those detailed above may have an economic impact at this stage. It therefore believes that these aspects should be addressed more fully after its proposed fundamental minimum employment standards have been put in place.

Time off provisions

Details of the Committee's recommendation that every person be allowed one rest day per week are given on page 14. However, Islanders' views on the need for legislation to control the issues of time off work for trade union duties, honorary service, ante-natal care and protection from Sunday working were also sought.

The Committee believes that protection from Sunday working is an issue to be addressed and agreed at the time the contract is entered into by the parties.

The Committee prefers that the issue of time off for trade union duties should also be dealt with as a contractual issue. Alternatively it should be addressed as part of any legislative programme introduced to deal with the trade union issues in Phase Two.

Its proposals for provision for time off for ante-natal care should, as previously stated, be dealt with after its unfair dismissal proposals are in place.

The feedback relating to time off for honorary service was that the local honorary system seemed to work comparatively well at present and that it should not be interfered with. The Committee feels that in an Island that relies so heavily on honorary systems and that has such a diversity of business it is best to leave the issue of time off for public duty to be dealt with by the parties as a contractual issue, the terms of which are to be negotiated upon between them.

9. Conclusion

There is no doubt that these proposals will eventually bring Jersey into line with best practice in developed countries whilst recognising that, as a small Island, it cannot reasonably cope with too much complex legislation. In essence, the proposals map out the route ahead, giving all parties time to absorb and adapt to the changes.

8th June 2000

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

Lodged au Greffe on 24th October 2000
by the Industries Committee

STATES OF JERSEY

STATES GREFFE

180 2000 P.183

Price code: B

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

(a) *after paragraph (1) insert the following paragraph –*

(2) to charge the Employment and Social Security Committee, in consultation with the Industries Committee, as part of its first phase of new legislation as set out in paragraph (1) above, to introduce legislation, or amend existing legislation as appropriate –

(i) to provide statutory recognition and regulation of trade unions in the Island;

(ii) to provide for the regulation of employee/employer relations; and

(iii) to define and regulate legitimate industrial action.

(b) *renumber paragraph (2) as paragraph (3).*

(c) *in the renumbered paragraph (3) delete sub-paragraph (a) and renumber sub-paragraphs (b) and (c) accordingly.*

INDUSTRIES COMMITTEE

REPORT

Purpose of the amendment

The purpose of this amendment is to charge the Employment and Social Security Committee, in consultation with the Industries Committee, as part of the first phase of implementation, to introduce legislation to provide statutory recognition, for the first time in Jersey, of trade unions; and the regulation of employee/employer relations.

In particular, it seeks to remove the uncertainty as to the status of trade unions; to provide a framework suitable for the effective promotion of collective agreements and other matters, combined with a forward-looking dispute resolution process, which includes provisions relating to industrial action; the whole in accordance with best practice in other jurisdictions (but principally smaller countries and states elsewhere).

The Industries Committee supports fully the proposals for the introduction of minimum employment legislation put forward by the Employment and Social Security Committee. However, it believes that the absence of legislation in Jersey relating to the legal status of trade unions, the rights of trade union members, due process for collective bargaining and the definition and regulation of industrial action is a serious issue in the twenty first century.

The present situation is especially unsatisfactory because most of the trade unions in Jersey are branches of United Kingdom national trade unions that are themselves subject to statutory law in the United Kingdom, but not in Jersey.

This amendment, therefore, seeks simply to put a higher priority on the introduction of trade union-related legislation than is currently proposed. It is important at this point to address two particular concerns –

(a) It is not intended to add a further burden on employers and organisations representing employees. The Industries Committee has listened carefully to feedback regarding the possibility of the imposition of excessive employment legislation.

(b) The Employment and Social Security Committee has repeatedly expressed the view that to introduce this legislation would significantly delay the introduction of the other parts of its employment law reform in Phase I.

In response –

(a) The Committee does not believe that this amendment will impose unduly onerous obligations on any party. On the contrary, there is much to commend an immediate clarification for all parties in the workplace environment, consonant with enlightened modern practice. For example, it is intended to reduce rather than increase the opportunity for adversarial relations; furthermore, the current philosophy of partnership already promoted by the States and major union representatives will be enhanced.

(b) The Industries Committee has never held the view that it would be desirable to delay the remainder of Phase I. The Employment and Social Security Committee has been aware of this stance since earlier this year. On careful consideration of all those matters set out in this report, but principally on legal advice, it has concluded that it is essential to include other matters in Phase I. We believe that the necessary draft Law can– indeed should – be prepared in parallel, drawing on models from elsewhere which command respect from all stakeholders.

Current status of trade unions in Jersey

Quite simply, there is no law in Jersey directly relating to trade unions. The situation is highly unsatisfactory because unions have been operating in the Island for many years. It could be argued that unions in Jersey have a status similar to those in the United Kingdom prior to the Trade Union Act 1871, which declared that purposes of trade unions were not illegal merely because they were in “restraint of trade”. They were – and therefore in Jersey

could still be – "unlawful organisations".

There is also resultant uncertainty over the status of collective agreements negotiated between employers and trade unions. If a union were not recognised under Jersey law or its status uncertain, the many collective agreements which are already in place could be susceptible to legal challenge.

It is probably true that Jersey is one of the very few jurisdictions in the developed world that has no law covering any aspect of trade union activity; nor even a law that recognises trade unions as lawful organisations. It is perhaps useful to note here a statement by Donaldson MR in 1982[16] that parties to industrial disputes "should know what is and what is not offside. And they must be able to find out for themselves by reading plain and simple words of guidance."

Whereas this statement by the Master of the Rolls was apparently aimed at the complexity of the United Kingdom law, the position in Jersey is even more uncertain. No one really knows "what is and what is not offside".

Rights of trade unions and their members

The lack of clarity of the legal status of trade unions as organisations and of individual members is a matter for some concern in the year 2000. In the United Kingdom and elsewhere, trade unions and their individual members have statutory rights and obligations covering a very wide range of activities.

Similarly, employers have rights and obligations, and it is important that such matters are established in law to ensure all parties to agreements –

(a) know what their rights, responsibilities and obligations are;

(b) have recourse to due process for the resolution of differences; and

(c) also have access to legal remedies, including litigation if ever necessary.

Previously it has been suggested that a "partnership agreement" be entered into with the main unions as agents for their members with the government of Jersey. The legal and practical difficulties identified by the Law Officers' Department, and described above, preclude the conclusion of a mutually acceptable agreement.

International Conventions on employment law

The Island is through the United Kingdom bound by certain conventions sponsored by the United Nations' International Labour Organisation.

The European Convention on Human Rights also protects the freedom of association (Article 11) and freedom from forced labour (Article 4).

For example, the ILO Convention on the Freedom of Association and Protection of the Right to Organise Convention 1948, provides for the right to establish trade unions (Articles 2 and 11), with separate legal personality (Article 7) and so on.

Both the spirit and letter of these international obligations appear to require the Island to remove any uncertainty as to the rights of the employees, whilst setting mutual obligations in the context of modern practice. Recently, it has been brought to the Committee's attention that the Island may be in contravention of these treaties, a possibility that cannot be ignored or allowed to continue if correct.

Summary

Jersey is a modern society with a healthy economy. The Industries Committee fully endorses the introduction of legislation to protect and enforce the rights of individual employees and their employers. Rather than the phased

approach in relation to employees' rights proposed by the Employment and Social Security Committee, the Industries Committee believes strongly in a parallel and balanced approach, which we believe is achievable within the current law drafting allocation approved in the Resource Plan. It is likely that the Industrial Disputes Law will be too out-moded to be revamped, and it would be our expectation that it would be replaced with a more contemporary and straightforward piece of legislation.

It wishes to support a workplace environment where optimum employee/employer relationships can be fostered and maintained; and parties can work in partnership to their mutual benefit – but particularly for the benefit of the community as a whole.

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS (P.183/2000) - AMENDMENT

Lodged au Greffe on 21st November 2000
by the Industries Committee

STATES OF JERSEY

STATES GREFFE

180 2000 P.218

Price code: A

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS (P.183/2000) – AMENDMENT

in paragraph (a) of the amendment, for the words –

"in consultation with the Industries Committee, as part of its first phase of new legislation as set out in paragraph (1) above, to introduce legislation, or amend legislation as appropriate–"

substitute the words –

"to consult with the Industries Committee and all other interested parties, and to present to the States as soon as possible a further report and proposition addressing the appropriate level of legislation necessary to implement a balanced and effective approach to the inter-related trade union issues identified in Part Two of the report of the Employment and Social Security Committee dated 8th June 2000, and in particular –"

INDUSTRIES COMMITTEE

Report

Following discussions between the Presidents of the Employment and Social Security Committee and the Industries Committee, it became clear that there is a considerable measure of agreement between the two Committees.

This concerns the principles and issues relating to trade union activities and the need for a legislative framework that will provide for union status and recognition, collective bargaining and dispute resolution processes. This framework, it is agreed, needs to be appropriate to the Island's particular situation, needs to provide a balancing set of rights and responsibilities for all parties involved, and needs to be put in place, after full and thorough consultation, in a timely fashion. This process would commence now as part of the first phase.

This amendment is accepted by the Employment and Social Security Committee. Given the agreement of both Committees the States are requested to accept the amended version of P.183/2000.

The amendment has no additional implications for the financial or manpower resources of the States.

Note: Once the substituted wording contained in this amendment is included in the original amendment of the Industries Committee (P.183/2000) that amendment would read as follows –

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

(a) *after paragraph (1) insert the following paragraph –*

(2) to charge the Employment and Social Security Committee to consult with the Industries Committee and all other interested parties, and to present to the States as soon as possible a further report and proposition addressing the appropriate level of legislation necessary to implement a balanced and effective approach to the inter-related trade union issues identified in Part Two of the report of the Employment and Social Security Committee dated 8th June 2000, and in particular –

(i) to provide statutory recognition and regulation of trade unions in the Island;

(ii) to provide for the regulation of employee/employer relations; and

(iii) to define and regulate legitimate industrial action.

(b) *renumber paragraph (2) as paragraph (3).*

(c) *in the renumbered paragraph (3) delete sub-paragraph (a) and renumber sub-paragraphs (b) and (c) accordingly.*

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[1] Strategic Policy Review and Action Plan 1997, p.3, para.1.1(iv) and p.24, para 2.17.

[2] Strategic Policy Review and Action Plan 1997, p.3, para 1.1(iv) and p. 24, para 2.17.

[3] Fair Play in the Workplace – President's Foreword.

[4] Fair Play in the Workplace – President's Foreword.

[5] Fair Play in the Workplace – Controller's Foreword.

[6] Fair Play in the Workplace p. 9.

[7] See Part 1, Section 3 of this Report.

[8] This body held its inaugural meeting in October 1999.

[9] Possible changes are discussed in Part 2, Section 5.

[10] It is worth noting that the forthcoming Human Rights legislation grants a similar right to association in Article 11.

[11] In the early 1970s the United Kingdom Government established ACAS as an independent body to offer advice and conciliation to both individuals who were bringing claims under employment legislation, and to unions and management who found themselves in situations where industrial action was brewing. However, the Government did not then proceed to introduce legislation to establish clear procedures to be followed by parties entering into a collective dispute. Neither did it establish any sort of forum, such as a Tribunal, which had the power to sit in adjudication on any collective dispute and pass a final decision that would be binding on the parties.

Instead, having established ACAS to act as an advisory and conciliatory body, the United Kingdom Government introduced, over a period of time, a raft of legislation affecting the trade unions, including provisions regulating the holding of ballots and restricting secondary picketing and prohibiting closed shops. That raft of legislation has become extremely complex and lengthy, and is still growing with the introduction in the United Kingdom of laws granting the unions further recognition rights.

[12] Article 8 of the Law requires the Industrial Disputes Officer to refer a matter for settlement to any "suitable machinery for negotiation or arbitration" that already exists in the environment concerned in the dispute, so long as he feels that that machinery has "not been exhausted". However, Article 10 authorises him to cancel such a reference and refer the matter to the Tribunal for settlement if he feels that "there is a failure to reach a settlement" through such machinery.

[13] United Kingdom legislation effectively allows for "cooling-off periods" by virtue of the time limits built into the ballot procedures relating to the calling of official industrial action.

[14] In addition, there is the further issue of equal pay for like work or work rated as equivalent. The Committee has been advised, however, that this issue is one of enormous complexity and it does not propose that it should be addressed in detail at this stage.

[15] *In addition, the Policy and Resources Committee have also established a Racial Discrimination Forum, whose remit is to look at racial discrimination areas in the Island. The Employment and Training sub-group of the Forum has been given the additional remit of considering other discriminatory areas such as sex and age.*

[16] Merkur Island Shipping Corp v Laughton 1982.