

STATES OF JERSEY



DRAFT TERMS OF EMPLOYMENT (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 2nd March 2004
by the Employment and Social Security Committee**

STATES GREFFE



Jersey

DRAFT TERMS OF EMPLOYMENT (JERSEY) REGULATIONS 200-

REPORT

Summary

The Terms of Employment (Jersey) Regulations 2001 expire on 31st March 2004. Until such time as the Employment Law is in force, these Regulations must be renewed to ensure that we continue to have basic contractual requirements described in a clear statement.

Background

The Terms of Employment Regulations were first introduced as triennial regulations in 1992. They have subsequently been renewed in 1995, 1998 and 2001. The Regulations are intended to outline, for employers and employees, fundamental issues that should be addressed and agreed upon when an employee takes up employment.

The Regulations provide that a statement of the Terms and Conditions of Employment needs to be provided by an employer to an employee within 4 weeks of the employee commencing employment. In most cases, the contract of employment will cover the issues required to be addressed by the statement.

The Regulations were primarily intended to promote the issue of clear terms and conditions of employment so that in situations where issues arose for discussion, guidance could be found on what had been agreed by reference to the statement. The issues covered are basic issues of good management practice that ensure that the parties are clear as to the terms on which the employment is offered. JACS provide advice, guidance and training on the Regulations.

Employment (Jersey) Law 2003

It had been envisaged that the Employment Law would be in place before the Regulations required renewal, but subordinate legislation is still being drafted, as is the associated Employment Relations Law. It is now envisaged that the legislation will come into effect in the spring of 2005, which also ensures that employers have a year's notice of the Minimum Wage. Renewal of these Regulations is now necessary as an interim measure.

Part 2 of the Employment (Jersey) Law 2003 incorporates and improves the Terms of Employment Regulations. The possibility of enacting this part ahead of the rest of the Law had been considered, but the Committee was advised that this would not be workable in view of the absence of more effective enforcement mechanisms until the Employment Tribunal is in place.

Financial/manpower statement

There are no financial or manpower implications for the States arising from the adoption of these Draft Regulations.

Explanatory Note

The purpose of these draft triennial Regulations is to require an employer to give an employee a written statement of the terms of his or her employment. They re-enact with effect from 1st April 2004 the Terms of Employment (Jersey) Regulations 2001, which expire on 31st March 2004.

Regulation 1 defines words used in the Regulations.

Regulation 2 is the requirement for an employer to give an employee, within 4 weeks of starting work, a written statement of the terms of his or her employment. Paragraph (2) sets out the particulars to be included in a statement. Paragraph (4) enables particulars to be included by reference to another document to which the employee has access.

Regulation 3 requires an employer to give an employee a further written statement in the event of a change in the terms of his or her employment. The notice must be given within 4 weeks of the change and the particulars can be included by reference to another document to which the employee has access. An employer must also give an employee immediate notice of a change of the employer's name.

Regulations 4 and 5 set out exceptions to the requirement to give a written statement. A written statement need not be given to an employee who has a written contract of employment which contains the necessary particulars and of which the employee has a copy. A written statement need not be given to an employee normally working less than 8 hours a week, or wholly or mainly outside the Island.

Regulation 6 provides for the appointment by the States of a Terms of Employment Officer and deputy. An employee can refer a failure to give a written statement to the Terms of Employment Officer. An employee or an employer can refer a question as to the particulars to be included in a written statement to the Terms of Employment Officer. Either the employee or employer may use a nominee. The Terms of Employment Officer may determine what particulars should have been included. Those particulars are then deemed to have been included in the statement. The Terms of Employment Officer has power to require persons to attend before the Officer and give evidence on oath and produce documents.

Regulation 7 makes it an offence, punishable by a fine not exceeding level 2 on the standard scale, for an employer to fail to comply with the Regulations. The same penalty is prescribed for any person who fails to attend, give evidence or produce documents when required by the Terms of Employment Officer.

Regulation 8 provides how the Regulations may be cited, and for them to remain in force for 3 years from 1st April 2004.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993 the standard scale of fines is –

Level 1 £50

Level 2 £500

Level 3 £2,000

Level 4 £5,000.



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Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Statement of terms of employment</u>
<u>3</u>	<u>Changes in terms of employment</u>
<u>4</u>	<u>Exclusion of certain written contracts</u>
<u>5</u>	<u>Exceptions</u>
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Jersey

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Made

[date to be inserted]

Coming into force

1st April 2004

THE STATES, by virtue and in exercise of the powers conferred on them by the Order in Council of the fourteenth day of April 1884,^[1] have made the following Regulations –

1 Interpretation

In these Regulations, unless the context otherwise requires –

“employee” means an individual who has entered into or works under a contract of employment;

“employer”, in relation to an employee, means a person by whom the employee is employed;

“employment” means employment under a contract of employment;

“job”, in relation to an employee, means the nature of the work which he or she is employed to do in accordance with his or her contract of employment and the capacity in and place at which he or she is so employed.

2 Statement of terms of employment

- (1) Subject to Regulations 4 and 5, not later than 4 weeks after an employee begins employment, the employer shall give to the employee a written statement in accordance with this Regulation.
- (2) A statement given under this Regulation shall, subject to paragraphs (3) and (4), contain the following particulars –
 - (a) the identity of the parties;
 - (b) the title of the job;
 - (c) the date on which the employment started;
 - (d) the period of notice which the employee is obliged to give and entitled to receive to terminate his or her employment;
 - (e) if the employment is for a fixed term, the date on which the contract of employment expires;
 - (f) the scale or rate of pay and the method of calculating pay (including overtime rates, shift pay and other pecuniary benefits) as at the date of the statement;
 - (g) the pay day, the frequency (that is, whether weekly or monthly or some other period) and the method of payment;
 - (h) the normal working hours and any overtime requirements; and
 - (j) terms relating to –
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee’s entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

- (ii) incapacity for work due to sickness or injury, including any provision for pay during any period of such incapacity,
 - (iii) maternity leave,
 - (iv) pension and pension schemes,
 - (v) redundancy, and
 - (vi) disciplinary and grievance procedures.
- (3) If there are no particulars to be included in the statement under any of sub-paragraphs (d) to (j) of paragraph (2), that fact shall be stated in writing on the statement.
- (4) A statement given under this Regulation may, for all or any of the particulars to be included in the statement, refer the employee to a document which the employee has reasonable opportunity of reading in the course of his or her employment or which is made reasonably accessible to the employee in some other way.

3 Changes in terms of employment

- (1) If, after the date on which a statement is given under Regulation 2, there is a change in the terms of employment to be included or referred to in that statement, the employer shall, not more than 4 weeks after the change, give to the employee a written statement notifying the employee of the change.
- (2) A statement given under paragraph (1) may, for all or any of the particulars to be given by the statement, refer the employee to a document which the employee has reasonable opportunity of reading in the course of his or her employment or which is made reasonably accessible to the employee in some other way.
- (3) If, after an employer has given to an employee a written statement under Regulation 2, the name of the employer is changed, without any change in the identity of the employer or in the terms of employment (other than the name of the employer) included or referred to in the statement, the employer, immediately after the change of name, shall give to the employee a written statement notifying the employee of the change.

4 Exclusion of certain written contracts

Regulations 2 and 3 shall not apply to an employee if –

- (a) his or her contract of employment is in writing, in one or more documents, and contains express terms to the same effect as those required to be specified under Regulation 2(2); and
- (b) his or her employer has given the employee a copy of the contract (with any variations made from time to time) or the employee has reasonable opportunity of reading such copy in the course of his or her employment or such a copy is made reasonably accessible to the employee in some other way;

but, if at any time after the start of his or her employment any or all of the terms of the contract cease to be applicable to the employee the employer shall, not more than 4 weeks after that time, give the employee a written statement in accordance with Regulation 2.

5 Exceptions

- (1) Nothing in these Regulations shall apply to an employee whose normal hours of employment are less than 8 hours a week.
- (2) Nothing in these Regulations shall apply to an employee who is engaged in work wholly or mainly outside Jersey, unless the employee ordinarily works in Jersey and the work outside Jersey is for the same employer.

- (3) If an employee should at any time come within the exception specified in paragraph (1) or paragraph (2), these Regulations shall cease to apply to that employee from that time.
- (4) If an employee should at any time cease to come within the exceptions specified in paragraphs (1) and (2), these Regulations shall apply to that employee as if the employment began at that time.

6 Determination of questions

- (1) There shall be appointed by the States, from among the Advocates and Solicitors of the Royal Court, to hold office during such period as the States may direct, an officer, to be known as “the Terms of Employment Officer”, to carry out the functions set out in this Regulation and an officer, to be known as “the Deputy Terms of Employment Officer”, to act in the event of the unavailability of the Terms of Employment Officer.
- (2) If an employer does not give an employee a statement as required by Regulation 2 or Regulation 3, the employee or a person nominated by the employee for the purpose may refer this omission to the Terms of Employment Officer who shall determine what particulars should have been included or referred to in a statement in order to comply with those Regulations.
- (3) If a statement purporting to be a statement under Regulation 2 has been given to an employee, and a question arises as to the particulars which should have been included or referred to in the statement in order to comply with these Regulations, the employer, the employee or a person nominated by the employer or employee for the purpose may refer the question to the Terms of Employment Officer, who shall determine it.
- (4) If, on a reference under this Regulation, the Terms of Employment Officer determines particulars as being those which should have been included or referred to in a statement given under Regulation 2 or Regulation 3, the employer shall be deemed to have given the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Terms of Employment Officer.
- (5) The Terms of Employment Officer shall not entertain a reference under this Regulation if the employment to which the reference relates has ceased, unless the reference is made before the end of the period of 3 months commencing with the date on which the employment ceased.
- (6) The Terms of Employment Officer shall sit in private to determine questions under these Regulations but otherwise shall determine his or her own procedure.
- (7) For the purpose of ascertaining the terms of employment on a reference under this Regulation, the Terms of Employment Officer may give notice in writing to persons requiring them to –
 - (a) attend before the Terms of Employment Officer and answer questions; and
 - (b) produce such documents as may be specified in the notice.
- (8) The Terms of Employment Officer may require any person appearing before him or her to give evidence on oath and, for that purpose, shall have power to administer an oath to such persons.
- (9) A person who without reasonable excuse fails to –
 - (a) comply with paragraph (7); or
 - (b) give evidence on oath when so required under paragraph (8),shall be guilty of an offence.

7 Offences and penalties

- (1) An employer who contravenes Regulation 2, 3 or 4 shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale. ^[2]
- (2) A person guilty of an offence under Regulation 6(9) shall be liable to a fine not exceeding level 2 on

the standard scale.^[3]

- (3) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

8 Citation and duration

- (1) These Regulations may be cited as the Terms of Employment (Jersey) Regulations 2004.
- (2) These Regulations shall come into force on 1st April 2004 and shall remain in force for 3 years from that date.

[1] *Recueil des Lois, Tomes IV-VI, page 46.*

[2] *Recueil des Lois, Volume 1992-1993, page 437.*

[3] *Recueil des Lois, Volume 1992-1993, page 437.*