

STATES OF JERSEY



DRAFT ACT ANNULLING THE EMPLOYMENT (QUALIFYING PERIOD) (JERSEY) ORDER 2014 (P.169/2014): COMMENTS

**Presented to the States on 16th January 2015
by the Council of Ministers**

STATES GREFFE

COMMENTS

1. The Council of Ministers strongly opposes the Proposition to annul the Employment (Qualifying Period) (Jersey) Order 2014.
2. The Council of Ministers is firmly committed to growing our economy and providing jobs for established residents, enabling us to fund essential services as our society ages. Business confidence, when deciding whether to recruit, is critical to this economic success.
3. In his statement to the States Assembly on 24th October 2014, the Chief Minister set out his vision for a strategic policy and the manner in which he proposed to discharge his responsibilities as Chief Minister. The statement included the following proposal: *“In order to remain aligned to our competitors I will propose pilot exemptions to the Employment Law for small business starting with an extension to the qualifying period for unfair dismissal claims.”*.
4. Employers and their representatives had expressed clear concerns that Jersey’s 26 week qualifying period was a significant factor in preventing or discouraging them from taking on more staff. While it is not possible to quantify the significance of the qualifying period in recruitment decisions, this perception nevertheless exists. Lifting this restriction is expected to boost employers’ confidence. The positive reaction of employers’ organisations to the change in the qualifying period strongly supports this (see, for example, the President’s message on the cover of the Jersey Chamber of Commerce’s December monthly newsletter¹).
5. This is particularly the case for locally-based small businesses that often do not have in-house human resources expertise, in terms of improving their confidence to make recruitment decisions. In addition, a longer qualifying period may encourage employers in businesses of all sizes to create new jobs, or give an unemployed person a chance.
6. Before requesting Law Drafting time for the Employment (Qualifying Period) (Jersey) Order 2014, the Minister for Social Security presented her proposal to the Council of Ministers. The Council of Ministers supported the introduction of a one-year qualifying period for jobs that start on, or after, 1st January 2015.
7. This change has brought the employment obligations of Jersey employers into line with employers in the Isle of Man, Guernsey and Northern Ireland, as well as closer to employers in the UK.
8. The report accompanying the Proposition states that to bring this: *“by order rather than by regulation is a deliberate attempt by the Minister to avoid debate”*. The change was made by Order because the Employment (Jersey) Law 2003, as adopted by the Assembly in 2003, gives the Minister the power to prescribe a different qualifying period by Order. This structure is how we

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ensure that legislative matters are dealt with quickly and efficiently, with 140 Ministerial Orders made in 2014.

9. In making her decision, the Minister carefully considered the Employment Forum's previous recommendation made in 2013. The Forum reported that, when considering whether to increase its unfair dismissal qualifying period, the UK Department for Business, Innovation and Skills found that: "*it is not possible to directly quantify the likely impact on business confidence and in turn on hiring behaviour*", and that "*detecting any effect is challenging*". This did not stop the UK increasing its qualifying period from one year to 2 years in 2012.
10. While the Forum found no direct evidence that a longer qualifying period **would** make a difference to job opportunities, it also found no direct evidence that it **would not** make a difference, or that 26 weeks is the correct qualifying period.
11. Accordingly, and given the experiences of other jurisdictions and the position of the Employment Forum, the Council of Ministers fully supports the Minister for Social Security's conclusion that further consultation in Jersey would not reveal evidence to support any particular qualifying period. As such, and given that this is a power enabled by Order, this was a matter for the Minister for Social Security to determine.
12. One of the Forum's main concerns about a longer qualifying period was the removal of unfair dismissal rights from thousands of employees in Jersey. Existing employees are, however, protected because they retain the right to claim unfair dismissal after 26 weeks' service. The decision has been taken to introduce an **additional** qualifying period that will only affect new jobs that start on, or after, 1st January 2015.
13. The Minister for Social Security should not be criticised for acting quickly. The Minister has taken swift action with the full backing of the Council of Ministers, sending an important signal to businesses that they are being supported by government to grow and create job opportunities. The positive reaction to the announcement from employers and their representatives has been a good indication that this will give a real boost to local businesses.