

# STATES OF JERSEY



## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 6) (JERSEY) LAW 201-**

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**Lodged au Greffe on 27th May 2016  
by the Chief Minister**

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**STATES GREFFE**





Jersey

## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 6) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Advocates and Solicitors (Amendment No. 6) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 26th May 2016

## REPORT

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### Executive Summary

The draft Law amends the Advocates and Solicitors (Jersey) Law 1997 (“**the 1997 Law**”) to enable more persons who are employed on a part-time basis to be able to qualify as advocates or solicitors.

The change has been instigated by a Royal Court judgment last year; *AG v Dunlop [2015] JRC007*. In *Dunlop*, a candidate for admission to the bar was unable to satisfy the requirements for admission because although she had been employed for a period exceeding 2 years in a local law firm, she had not worked the equivalent of 2 years on a full-time basis. This highlighted that persons working less than 3½ days a week (advocates) or 4 days a week (solicitors) may never be in a position to qualify, because the 1997 Law requires the relevant time in office to be completed within a window period of 3 years (advocates) or 4 years (solicitors).

The draft amendment will amend the 1997 Law by extending the window period to enable more persons working on a part-time basis to be able to complete the requisite periods of employment. The requisite minimum periods of employment are not being amended, so the effect of the amendment will not be to allow persons to qualify having worked fewer hours, but it will simply enable such persons to complete the requisite period over a longer period.

### Requirements under the 1997 Law

In order to be admitted as an advocate or solicitor, a person needs to satisfy certain academic requirements, and the Royal Court must also be satisfied that the candidate is a “fit and proper person” to be so admitted. The person must also have spent a minimum period of time working in a relevant legal office in Jersey, and it is this aspect of the qualifying criteria which was in question in *Dunlop* and which is amended by the draft Law.

For a person seeking admission as an advocate, he or she must have been employed in one or more relevant offices<sup>1</sup> for a period or periods totalling 2 years within the 3 years immediately preceding the application. For solicitors, the period is 3 years’ employment within the 4 years immediately preceding the application. There is also provision in the 1997 Law for a person who has worked for 5 years in a relevant office, including the whole of the 2 years immediately preceding the application, to apply for admission as a solicitor. Such a person may, having passed the local qualifying examination, apply for admission as a solicitor, notwithstanding the fact that he or she has a degree other than a law degree from an approved university (however, prior to undertaking the Jersey exams, he or she must sit a “preliminary examination” consisting of the same subjects as an English law degree). Finally, persons who have practiced as a Jersey solicitor for 3 years may apply for admission to the Jersey Bar.

In *Dunlop*, the Court considered Article 3(2)(b) of the 1997 Law in the context of the legislative history and principles of statutory interpretation, and concluded that –

*“the purposive construction is that there must have been employment for two years out of the last three in a relevant office and it does not matter if that is achieved by two years’ full time employment with up to a year off or*

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<sup>1</sup> A relevant office is an office of an advocate or solicitor in Jersey, the Law Officers’ Department, or the Judicial Greffe

*something less than full time employment over a three year period where the aggregate time employed reaches the same total as a two years' full time employee.*"<sup>2</sup>.

Although it was not explicitly stated in the judgment, the above interpretation would most likely apply by analogy to the employment periods in the 1997 Law regarding persons seeking admission as a solicitor.

The ultimate conclusion therefore was that the candidate was not qualified, and the Court urged the Attorney General to bring the matter to the attention of the Chief Minister in the hope that the 1997 Law could be reviewed.

### **Effect of the Dunlop decision**

The effect of the Court's decision in *Dunlop* is therefore that –

- Under Article 3(2)(b) of the 1997 Law, a person employed on a part-time basis who works just under 3½ days per week<sup>3</sup> for 3 years shall be eligible to apply for admission to the Bar, as he or she shall accumulate the requisite equivalent of 2 years within those 3 years. Any person working fewer days per week will be excluded from applying for admission;
- Under Article 4(2)(c) of the 1997 Law, a person employed on a part-time basis who works just short of 4 days a week<sup>4</sup> for 4 years shall be eligible to apply for registration as a solicitor, as he or she shall accumulate the requisite equivalent of 3 years within those 4 years. Any person working fewer days a week will be excluded from applying for registration; and
- Under Article 4(3)(b) of the 1997 Law, no part-time employee has the ability to accumulate the requisite experience to be able to apply for registration as a solicitor under this provision, as he or she must have been employed on a full-time basis for the whole of the 2 years immediately preceding the application.

Clearly, this is an unsatisfactory position to be in, as it excludes a large proportion of persons who work on a basis upon which their working week is smaller than the periods stated above. Furthermore, the discrepancy which means a higher proportion of part-time employees are excluded from the solicitor profession than the advocate profession has no justification.

The potential discriminatory effect on part-time workers, the majority of whom are likely to be female, is likely to be disproportionate. The Legislation Advisory Panel and the Law Society agree that the 1997 Law should be adjusted to extend the possibility of qualification to more persons working part-time in a local office. However, on the other hand, there is also a desire to place a reasonable and proportionate limit on the time in which the requisite period of employment could be completed, otherwise the purpose of the requirement (i.e. to gain reasonable experience in a local office) would be defeated.

### **The effect of the draft Law**

Following consultation with the Law Society and the legal profession, the Law Officers' Department and the Chief Minister's Department worked on developing the policy for the draft Law. The principles of the draft Law have been consulted upon with the Bailiff and Deputy Bailiff, the Law Society and the legal profession, and the draft Law was recommended to the Chief Minister by the Legislation Advisory Panel.

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<sup>2</sup> Paragraph 34, [2015] JRC 007

<sup>3</sup> 3.3 days per week

<sup>4</sup> 3.75 days per week

### *Adjusting the window and clarifying “employment”*

The respective periods in which a person must complete the employment in a local office are adjusted as follows –

- **For a person seeking admission as an advocate:** in the 4 years immediately preceding the application for admission to the Jersey Bar, the person must have been employed for a period(s) amounting to the equivalent of 2 years’ full-time in a relevant office(s). This will therefore enable a person working 2½ days per week over a 4 year period to be eligible for admission to the Bar;
- **For a person seeking admission as a solicitor:** in the 6 years preceding the application for admission as a solicitor, the person must have been employed for a period(s) amounting to the equivalent of 3 years’ full time in a relevant office(s). This will therefore enable a person working 2 ½ days per week over a 6 year period to be eligible for admission as a solicitor; and
- **For a person without a prior law degree from an approved university, seeking admission as a solicitor:** the equivalent of 2 years’ full-time employment in a relevant office(s) must be completed within the 4 years immediately preceding the application, and period(s) totaling the equivalent of 5 years’ full-time employment in a relevant office(s) must be completed within the 10 years immediately prior to the application.

The 1997 Law is also amended to provide that a reference to “employment” is to be read as a reference to full-time employment. Different offices will apply different interpretations of full-time, and therefore a standard of at least 32 hours has been agreed upon as this the minimum level for full-time trainee solicitors in England and Wales.

It is also now clarified in the 1997 Law that a person must be predominantly engaged in legal matters, thus removing any doubt that employment in non-legal matters could be considered as counting towards a person’s required legal experience.

### *Solicitors converting to become Advocates*

The provision for solicitors being in a position to apply for admission to the Bar having practiced as a solicitor for 3 years has been adjusted so that an applicant must have been employed in, or practiced as a solicitor in, a relevant office for 3 years. This has been done to align this provision with the provisions for admission to the Bar or as a solicitor, so that a person must gain their experience as a solicitor in a relevant legal office. By providing for those employed in a relevant office and also those who practice as a solicitor in a relevant office, this will allow a person who has set up his or her own practice to accumulate time even if he or she is not strictly “employed.”

Furthermore, to harmonise this provision with the other employment provisions, a window period of 6 years has been provided so that a solicitor working part-time can also achieve “cross-qualification.”

A small housekeeping change has also been made to Article 3(3)(b)(i) of the 1997 Law for solicitors seeking to “cross-qualify” having completed the necessary professional exams (in respect of the law of a jurisdiction outside Jersey), so that it is clear that such a person may complete those exams before, on or after being admitted as a solicitor.

### *Discounting absences*

Concerns were expressed during the consultation process that there could be potential unfairness if a person was, for example, absent from work for a significant period of time during the required period of employment; and therefore the draft Law provides

that where a person is absent from the office for a continuous period exceeding 6 weeks, any absence in excess of those 6 weeks will be discounted. However, time spent absent from the office on study leave studying Jersey law for the qualifying examination will continue to count, as this can be considered to be an adequate substitution for time spent in the office.

*Discretion to extend the window*

The draft Law provides the Attorney General with discretion to extend “the window period” where the person has completed the required period of employment, but not within the window period, and where the Attorney General is satisfied that there are exceptional circumstances that would cause undue hardship to the person if the window period were not extended. This will alleviate any potential hardships caused by persons working part-time taking a break in employment for any particular reason.

*Board of Examiners*

The opportunity has also been taken to make some housekeeping amendments to Article 9 of the 1997 Law which provides for the Board of Examiners. The amended Article 9 provides more flexibility in the composition of the panel appointed for each examination, and allows Rules of Court to provide for the constitution of a panel and any other necessary or expedient matters relating to the conduct of the examinations.

*Power to amend the Law by Regulations*

The draft Law inserts into the 1997 Law a provision empowering the States to amend the Law by way of Regulations.

**Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

**Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### **Human Rights Note on the Draft Advocates and Solicitors (Amendment No. 6) (Jersey) Law 201-**

The Law Officers' Department has considered the draft Law and is of the opinion that no rights provided for under the ECHR are engaged. The Royal Court made it clear in *Dunlop* that Article 2, Protocol 1 to the ECHR (right to education) is not engaged by restrictions on entitlement to be admitted and practise as a lawyer.

The draft Law is therefore considered to be compatible with the ECHR.



## Explanatory Note

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This Law amends the Advocates and Solicitors (Jersey) Law 1997 as to the time to be spent in employment in a relevant office in order to be entitled to be admitted to the Bar or as a solicitor. The amendments alter some of the periods and provide for the treatment of part-time employment.

*Article 1* defines “principal Law” as the Advocates and Solicitors (Jersey) Law 1997.

*Article 2* amends the long title of the principal Law to reflect what is now covered by that Law (see also *Article 6* below).

*Article 3* amends Article 3 of the principal Law, on requirements for admission to the Bar. It extends, from 3 years to 4 years, the time within which an applicant who is not a solicitor must complete a total of 2 years of employment in a relevant office. It ensures that, for an applicant who is a solicitor, it is irrelevant whether the applicant passed the relevant professional examinations (in respect of the law of a jurisdiction outside Jersey) before, on or after qualifying as a solicitor. It also substitutes, for the requirement to have practised as a solicitor for 3 years, a requirement to have so practised, or been employed in a relevant office for a total of 3 out of the last 6 years. It replaces the requirements as to employment outside Jersey with a cross-reference to the new provision on those requirements in Article 4A of the principal Law, as inserted by *Article 5*.

*Article 4* amends Article 4 of the principal Law, on requirements for admission as a solicitor. It extends the time, within which an applicant who has passed the relevant academic examinations (in respect of the law of a jurisdiction outside Jersey) must complete a total of 3 years of employment in a relevant office, from 4 years to 6 years. For an applicant who has not passed those academic examinations, it replaces the current requirement for length of employment with a requirement that the person has been in the relevant employment for a total of 5 out of the last 10 years, including 2 out of the last 4 years. It replaces the requirements as to employment outside Jersey with a cross-reference to the new provision on those requirements in Article 4A of the principal Law, as inserted by *Article 5*.

*Article 5* inserts a new Article 4A in the principal Law. It makes common provision in relation to Articles 3 and 4 of the Law in relation to the requirements for employment in a relevant office. It makes new provision for accounting for absence from employment, so that if the person is absent for longer than 6 weeks (other than on study leave for the Jersey law element of the qualifying examinations) then the excess over 6 weeks will not count towards the required period of employment. It reproduces and clarifies the current provision to allow up to 6 months of employment in an advocate’s or solicitor’s office outside Jersey to be counted if the employer certifies the applicant was nevertheless engaged predominantly in matters of Jersey law. It establishes that employment is only to be counted if it is employment engaging predominantly in legal matters (for example discounting time spent employed as a book-keeper or information technology worker for the office).

Paragraphs (6)(b) to (10) of the new Article 4A make express provision for how periods of part-time employment are to be counted towards the various required periods. If the employment is for 32 hours a week or more, it is treated as full-time employment and the period of that employment is counted in full. If the employment is for less than 32 hours a week or more, it is treated as part-time employment. In the case of part-time employment, the required period of employment is extended in

proportion so that the equivalent of the full-time requirement is met (so that, for instance, 2 weeks of employment at 16 hours a week is to be counted as equivalent to 1 week of full-time employment). Each of the required periods of employment must be completed within a “window” period that is twice as long as the required period. The Attorney General is given discretion to extend such a window period, if satisfied that there are exceptional circumstances that would otherwise cause undue hardship. The principles as to timing, for periods of employment in a relevant office, apply in the same way to periods of practice as a solicitor, for the purpose of the substituted Article 3(3)(b)(ii) of the principal Law (see notes on *Article 3(c)* above).

*Article 6* amends Article 9 of the principal Law, which provides for the Board of examiners and for panels of that Board to conduct examinations. The amendment removes the requirements for a minimum of 5 examiners on a panel, and for each panel to include at least one of the Deputy Bailiff, the Attorney General and the Solicitor General. The amendment ensures that separate panels can be appointed for the preliminary and final examinations that make up the qualifying examination. It also extends the power to make Rules of Court, so that the Rules can provide for the constitution of the panels and for any other matters related to the conduct of qualifying examinations (including preliminary and final examinations).

*Article 7* inserts a new Article 10 in the principal Law (the previous Article 10, dealing with discipline, was repealed in 2005). It enables the States to amend the Law by Regulations, instead of having to use an amending Law. Its effect is limited in scope by the long title of the principal Law, as amended by *Article 2*.

*Article 8* names this Law and would bring it into force 7 days after its registration by the Royal Court.



Jersey

## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 6) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 6) (JERSEY) LAW 201-**

**A LAW** to amend further the Advocates and Solicitors (Jersey) Law 1997

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

In this Law “principal Law” means the Advocates and Solicitors (Jersey) Law 1997<sup>1</sup>.

### **2 Amendment of long title**

In the long title of the principal Law –

- (a) for the words “revise and consolidate the Laws” there are substituted the words “make provision”; and
- (b) the words “and the regulation of the practice of solicitors,” are deleted.

### **3 Amendment of Article 3**

In Article 3 of the principal Law –

- (a) in paragraph (2)(b) for the words “3 years” there are substituted the words “4 years”;
- (b) in paragraph (3)(b)(i), for the words “that when so admitted he or she had passed” there are substituted the words “that the person has (whether before, on or after being admitted as a solicitor) passed”;
- (c) for paragraph (3)(b)(ii) there is substituted the following clause –
  - “(ii) that, in the period of 6 years immediately preceding the person’s application for admission to the Bar in

accordance with Article 8, the person has been employed as, or has practised as, a solicitor for a period of, or periods totalling, 3 years in a relevant office or in more than one such office.”;

- (d) for paragraphs (4) and (5) there is substituted the following paragraph –  
“(4) This Article is subject to Article 4A.”.

#### 4 Amendment of Article 4

In Article 4 of the principal Law –

- (a) in paragraph (2)(c) for the words “4 years” there are substituted the words “6 years”;
- (b) for paragraph (3) there is substituted the following paragraph –  
“(3) The requirements are that –  
(a) the person has passed the qualifying examination;  
(b) in the period of 10 years immediately preceding the person’s application for admission as a solicitor in accordance with Article 8, the person has been employed for a period of, or periods totalling, 5 years in a relevant office or in more than one such office; and  
(c) in the period of 4 years immediately preceding that application, the person has been employed for a period of, or periods totalling, 2 years in a relevant office or in more than one such office.”;
- (c) for paragraphs (4), (4A) and (5) there is substituted the following paragraph –  
“(4) This Article is subject to Article 4A.”.

#### 5 Insertion of Article 4A

After Article 4 of the principal Law there is inserted the following Article –

##### “4A Employment in relevant office for purposes of Articles 3 and 4

- (1) This Article applies for the purpose of the references in Articles 3 and 4 to periods of employment in a relevant office.
- (2) If a person is absent from employment for a period of more than 6 weeks, the excess over 6 weeks is not to be treated as a period of employment in a relevant office.
- (3) For the purpose of paragraph (2), a person is not absent from employment if the person is on study leave, being leave given to enable the person to study the law of Jersey for the qualifying examination.
- (4) A period of employment outside Jersey may nevertheless be treated as a period of employment in a relevant office if –

- (a) the person was employed for that period in an advocate's or solicitor's office outside Jersey; and
  - (b) the advocate or solicitor certifies that for that period the person was engaged predominantly in matters of Jersey law.
- (5) If a period of employment outside Jersey, or the total of any periods of such employment, exceeds 6 months, the excess over 6 months is not to be treated by virtue of paragraph (4) as a period of employment in a relevant office.
- (6) A reference to employment is to be read as a reference to employment that is –
- (a) employment engaging predominantly in legal matters; and
  - (b) full time employment, being employment for 32 hours a week or more.
- (7) Notwithstanding paragraph (6)(b), a period of part time employment, being employment for less than 32 hours a week, may be counted towards the required period of employment, if that required period of employment is treated as extended by the amount of time that renders the period of part time employment equivalent to a period of full time employment.
- (8) For the purpose of paragraph (7) the “required period of employment” means –
- (a) in relation to Article 3(2), the period of 2 years mentioned in Article 3(2)(b);
  - (b) in relation to Article 3(3), the period of 3 years mentioned in Article 3(3)(b)(ii);
  - (c) in relation to Article 4(2), the period of 3 years mentioned in Article 4(2)(c); and
  - (d) in relation to Article 4(3), the period of 5 years mentioned in Article 4(3)(b) and the period of 2 years mentioned in Article 4(3)(c).
- (9) The Attorney General may extend the window period if –
- (a) the person completed the required period of employment (within the meaning of paragraph (8));
  - (b) that required period would not otherwise fall within the window period; and
  - (c) the Attorney General is satisfied that there are exceptional circumstances that would cause undue hardship to the person if the window period were not extended.
- (10) For the purpose of paragraph (9) the “window period” means –
- (a) in relation to Article 3(2), the period of 4 years mentioned in Article 3(2)(b);
  - (b) in relation to Article 3(3), the period of 6 years mentioned in Article 3(3)(b)(ii);
  - (c) in relation to Article 4(2), the period of 6 years mentioned in Article 4(2)(c); and

(d) in relation to Article 4(3), the period of 10 years mentioned in Article 4(3)(b) and the period of 4 years mentioned in Article 4(3)(c).

(11) Paragraphs (2), (3), (6)(b) and (7) to (10) apply to the reference in Article 3(3)(b)(ii) to periods of practice as a solicitor in a relevant office, as they apply to references to periods of employment in a relevant office.”.

## 6 Amendment of Article 9

In Article 9 of the principal Law, for paragraphs (2) to (4) there are substituted the following paragraphs –

“(2) The Board is to consist of –

- (a) the Deputy Bailiff, as the President of the Board;
- (b) the Attorney General;
- (c) the Solicitor General;
- (d) such advocates and solicitors of the Royal Court as are for the time being appointed for the purpose by the advocates and solicitors of the Royal Court generally; and
- (e) any persons co-opted under paragraph (5)(b).

(3) Each examination that falls within any of the sub-paragraphs of paragraph (4) shall be conducted by a panel of examiners appointed for that particular examination by the Board from among its members.

(4) The examinations to which paragraph (3) refers are –

- (a) a preliminary examination for which provision is made under Article 6(5)(a);
- (b) a final examination for which provision is made under that Article; and
- (c) a qualifying examination in respect of which no provision is made under that Article for a preliminary examination and a final examination.

(5) Rules of Court may provide for –

- (a) the constitution of a panel of examiners appointed under paragraph (3);
- (b) the co-option of one or more persons, who are experienced in the setting and marking of examinations in law (whether or not they are advocates or solicitors), as non-voting members of the Board;
- (c) the appointment of one or more persons, co-opted under sub-paragraph (b), as advisers to a panel on the setting and marking of the examination for which that panel is appointed under paragraph (3); and
- (d) such other matters in relation to the conduct of qualifying examinations as the Royal Court considers necessary or expedient, including transitional arrangements and savings.”.



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**7 Insertion of Article 10**

After Article 9 of the principal Law there is inserted the following Article –

**“10 Power to amend by Regulations**

The States may by Regulations –

- (a) amend this Law; and
- (b) make such supplementary, incidental, consequential, transitional or savings provision as appears to the States to be necessary or expedient for the purposes of that amendment.”.

**8 Citation and commencement**

This Law may be cited as the Advocates and Solicitors (Amendment No. 6) (Jersey) Law 201- and comes into force on the seventh day after its registration.

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<sup>1</sup> *chapter 07.070*