STATES OF JERSEY

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DRAFT EMPLOYMENT RELATIONS (AMENDMENT No. 2)(JERSEY) LAW 20θ

Lodged au Greffe on 15th May 2006
by the Minister for Social Security

STATES GREFFE

Jersey

DRAFT EMPLOYMENT RELATIONS (AMENDMENT No. 2) (JERSEY) LAW 200

European Convention on Human Rights

The Minister for Social Security has made the following statement –

In the view of the Minister for Social Security the provisions of the Draft Employment Relations (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F. Routier**

REPORT

Background

The Draft Employment Relations Law is based on a dispute resolution approach. The objective is to encourage discussion and the resolution of disputes as quickly as possible and to provide a clear process by which disputes are handled in order to reduce conflict and support good industrial relations in the Island.

Experience of our previous Industrial Disputes (Jersey) Law 1956 suggested that the process of resolution is likely to be iterative, encouraging continuing negotiation where procedures have not been fully exhausted, and these elements have been incorporated into the draft Law.

It is generally accepted that collective dispute outcomes are more positive where voluntary dispute resolution processes have been used, so the initial stages of resolution are voluntary. However, where a collective agreement is in place, a "collective employment dispute" may be referred to the Tribunal for a declaration.

To support and supplement the minimalist legal approach provided in the draft Law, independent conciliation is available through the Jersey Advisory and Conciliation Service and good practice procedures are provided in codes of practice to describe what constitutes "reasonable" and "unreasonable" behaviour. The Tribunal may take into account the extent to which the parties had observed the appropriate code of practice when reaching its decision.

The intention was to provide a simple legal framework, which avoids the potential for expensive litigation, is appropriate to a small community and incorporates the existing culture of negotiation and conciliation, established through the Industrial Disputes Law, and which is also promoted elsewhere in the world.

Proposed Amendment

Earlier this year, Deputy Southern lodged an amendment (P.5/2006) to the draft Law which would provide that an employment dispute may be a collective dispute, even if there is no collective agreement in place, as long as the trade union by whom the employee or employees are represented fulfils criteria for the recognition of a union that are set out in a code of practice.

The view of the Minister for Social Security was that it would be appropriate to allow an appeal mechanism where a dispute arose over recognition. However, there were concerns about the scope of the amendment, the impact on small businesses and the method of enforcement.

Following discussions, the Minister has decided to put forward an amendment which provides that where a collective agreement does not already exist between the employer and employees, a dispute is not a "collective dispute" (and therefore may not be referred to the Tribunal) unless it relates wholly to an issue as to whether a code of practice about union recognition is being observed.

Although the original intention was for the Tribunal to have declaratory rather than coercive powers in the first instance, there is concern that an employer could continue to refuse to recognise a union for collective bargaining purposes, despite the procedures in the recognition code of practice having been met by the union.

The Deputy's accompanying report states that his amendment addresses the right of a trade union to be recognised by an employer, subject to the union's compliance with the code of practice. However, his amendment does not make provision for the Tribunal to adjudicate or make a declaration on the matter of recognition.

The Minister wishes to ensure that the codes of practice are on an equal footing in terms of the Tribunal's jurisdiction to make a declaration upon them. This amendment provides that, following the referral of a dispute about non-observance of the recognition code of practice, the Tribunal may make a declaration on the matter.

Without this additional provision, it might technically be possible for the Tribunal to hear a collective dispute involving a union that is not recognised, however, it is questionable whether any finding or declaration on the question of recognition would relate to "terms and conditions" falling within the meaning of Article 23 of the draft Employment Relations Law. It would therefore be unlikely that the Tribunal would have the jurisdiction to make a declaration that would meaningfully affect recognition rights.

The aim of this amendment is to provide a simple mechanism by which Jersey's Employment Tribunal may perform a similar role to the U.K.'s Central Arbitration Committee. The CAC may issue a declaration that a union is recognised or not, depending on whether certain criteria, such as balloting requirements, are met. When

statutory recognition is declared by the CAC, it asks the parties to agree a method for conducting collective bargaining, but only on pay, hours and holidays. If a method cannot be agreed, the CAC must specify a method, taking into account a "model method", which is then legally enforceable by the courts.

A standalone mechanism such as the U.K.'S CAC is not considered to be necessary in Jersey as it is likely to create unnecessary bureaucracy and cost given that these provisions would only apply to employers with 21 or more employees. It is anticipated that few will use the statutory recognition procedure as the emphasis will be on achieving voluntary recognition wherever possible.

This amendment therefore provides that the Tribunal can make a declaration on recognition and collective bargaining, such as specifying a legally binding method of collective bargaining on pay, hours and holidays which is enforceable by the courts in the event of non-adherence.

Conclusion

The proposed amendment is intended to ensure that the four proposed codes of practice are equal in terms of the Tribunal's jurisdiction to make a declaration upon them and to provide clarity on the procedure for dealing with recognition disputes for employers, employees and unions.

The effect of the amendment is to –

- Define the scope of a "recognition dispute". Under the draft Employment Relations Law, a dispute is only a "collective employment dispute" if a collective agreement exists between the employer and union. This amendment widens that definition to include a "recognition dispute" as to whether an approved code of practice for the recognition of trade unions is being observed.
- Give the Employment Tribunal the jurisdiction to make a declaration on such disputes. This will enable either party to refer a recognition dispute to the Employment Tribunal which can then make a declaration (enforceable in the Royal Court) that the trade union is recognized for conducting collective bargaining with the employer in respect of pay, hours of work and holidays, and can also specify a method of conducting collective bargaining.
- Limit the extent of these new provisions to employers will 21 or more employees.

However, the code of practice will still be the key element in the recognition procedure, dealing with issues relating to appropriate bargaining units, balloting of members and setting out what is "reasonable" for each of the parties in the event of a union seeking recognition.

Financial and manpower statement

There are no additional financial or manpower implications arising from this amendment.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 12th May 2006 the Minister for Social Security made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Social Security the provisions of the Draft Employment Relations (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law would amend the Employment Relations (Jersey) Law 200-.

Under the principal Law, disputes are only "collective employment disputes" where collective agreements exist between employers and employees who are represented by trade unions.

The effect of the amending Law is to widen the definition "collective employment dispute" to include a "recognition dispute".

That expression – "recognition dispute" – is itself defined to mean a dispute relating wholly to an issue as to whether an approved code of practice for the recognition of trade unions is being observed for the purposes of any matter relating to pay, hours of work or holidays.

The amending law will enable the employers or trade unions concerned to refer recognition disputes to the Jersey Employment Tribunal. It would give the Tribunal jurisdiction to make a declaration that a trade union is recognized as being entitled to conduct collective bargaining with the employer or employers concerned, in respect of pay, hours of work and holidays.

In making such a declaration, the Tribunal could specify a method by which collective bargaining shall be carried out. The declaration would have effect as if it were a contract between the trade union and the employer or employers. It would be enforceable in the Royal Court by (but only by) an order for specific performance.

However, the new provisions as to the Tribunal's jurisdiction in respect of recognition disputes will not apply to employers who employ on average fewer than 21 employees.

If enacted, the amending Law would come into force on a date to be appointed by the States, by Act.

Jersey

DRAFT EMPLOYMENT RELATIONS (AMENDMENT No. 2) (JERSEY) LAW 200

Arrangement

Article

Jersey

DRAFT EMPLOYMENT RELATIONS (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend further the Employment Relations (Jersey) Law 200-.

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 –

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1 Interpretation

In this Law, "principal Law" means the Employment Relations (Jersey) Law 200-[1].

2 Article 1 amended

Article 1 of the principal Law shall be amended by inserting after the definition "prescribed" the following definition –

" 'recognition dispute' means a dispute that relates wholly to an issue as to whether an approved code of practice as to the recognition of trade unions is being observed by one or more employers, or by one or more employees, for the purposes of any matter relating to pay, hours of work or holidays;".

3 Article 5 amended

Article 5 of the principal Law shall be amended by inserting after paragraph (2) the following paragraphs –

"(2A) In this Law, 'collective employment dispute' also means a dispute between one or more employers and one or more employees, where –

(a) the employee or employees concerned are represented by a trade union;

(b) the trade union is one that fulfils criteria for its recognition that are set out in an approved code of practice; and

(c) the dispute is a recognition dispute.

(2B) However, a recognition dispute between –

(a) an employer who employs on average fewer than 21 employees in the period of 13 weeks immediately preceding the day on which the dispute arises; and

(b) the trade union,

is not a collective employment dispute.".

4 Article 23 amended

(1) Article 23(2) of the principal Law shall be amended –

(a) in sub-paragraph (c), by substituting for the full stop the word"; or";

(b) by adding after sub-paragraph (c) the following sub-paragraph –

"(d) in the case of a recognition dispute, the opinion of the Tribunal as to whether the trade union is recognized as being entitled to conduct, on behalf of any employee or employees, collective bargaining with the employer or employers in respect of any matter relating to pay, hours of work or holidays.".

(2) After Article 23(2) of the principal Law there shall be inserted the following paragraph–

"(2A) A declaration to which paragraph (2)(d) refers may specify a method by which collective bargaining shall be carried out, and a method so specified shall have effect as if it were contained in a legally enforceable contract made between the employer or employers and the trade union.".

5 New Article 24A inserted

After Article 24 of the principal Law (but before Part 5 of the Law) there shall be inserted the followin Article –

"24A Enforcement of declaration in recognition dispute

A declaration to which Article 23(2)(d) refers –

(a) shall have effect as if it were a legally enforceable contract made between the parties to the collective employment dispute to which the declaration relates; and

(b) shall be enforceable in the Royal Court by but only by an order for specific performance.".

6 Citation and commencement

(1) This Law may be cited as the Employment Relations (Amendment No. 2) (Jersey) Law 200-.

(2) This Law shall come into force on such day as the States may by Act appoint.

[1] *Law is currently awaiting Privy Council Sanction*