

**DRAFT FINANCIAL SERVICES COMMISSION  
(AMENDMENT No. 2) (JERSEY) LAW 199**

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**Lodged au Greffe on 31st March 1998  
by Senator S. Syvret**

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**STATES OF JERSEY**

**STATES GREFFE**

## Report

Paragraphs (6) and (7) of Article 9 of the Financial Services Commission (Jersey) Law 199 have the function of conferring upon the Financial Services Commission an absolute power in law to refuse to recognise an employees' representative body. It has been argued that whilst these paragraphs give the power to refuse to recognise an employees' association, they do not prevent the Financial Services Commission from recognising such a body should it voluntarily choose to do so. Such a position cannot be regarded as satisfactory as it produces a fundamental change in that it places the recognition of an employees' association in the gift of the employer and attacks the long established and hard won *right* of labour to organise; a right long recognised throughout the western world.

Jersey is bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the ECHR"), Article 11 of which states -

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

Article 11 also contains a qualification of this right which I will quote in full for the sake of clarity -

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law *and* (my emphasis) are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The power conferred by such qualifications to abridge basic rights is only ever invoked by signatory states to the ECHR under the most serious of circumstances. For example the government of the United Kingdom - in a highly contentious move - banned staff at GCHQ from

belonging to a union or association as it was felt that such organisations might pose a threat to national security during the 'Cold War' with the former Eastern Bloc. It is however worth noting that the authorities in the United Kingdom have since revoked the ban deeming it excessive and unnecessary.

Even if Jersey were a nation state - which of course it is not - it would be implausible in the extreme to argue that staff at a Financial Services Commission being members of an association constituted a threat to "national security". Neither have signatory states to the ECHR felt it necessary or sustainable to invoke the qualification to Article 11 in order to prevent civil servants - who are involved in the administration of the State, or police officers from forming associations to represent their interests. To date no remotely plausible argument for the existence of paragraphs (6) and (7) has been put that would be sustainable in the light of Jersey's obligations under the European Convention.

A further consideration are Jersey's obligations under the Conventions of the International Labour Organisation. Until 16th October 1950 Jersey, Guernsey and the Isle of Man were considered integral parts of the national metropolitan territory of the United Kingdom. Since that date, at the request of the United Kingdom, the islands have been regarded as non-metropolitan territories. Conventions ratified after this date are applicable only under the procedure set out in Article 35 of the ILO Constitution. However, ILO Convention No. 87 and ILO Convention No. 98 were ratified by the United Kingdom on 27th June 1949 and 30th June 1950 respectively and are therefore binding on Jersey.

ILO Convention No. 87 confers Freedom of Association and Protection of the Right to Organise. Convention No. 98 confers a Right to Organise and Collective Bargaining. It would therefore appear that paragraphs (6) and (7) of Article 9 of the Financial Services Commission (Jersey) Law 199 render Jersey in breach of these conventions.

If the States of Jersey are to begin conferring upon employers an absolute right in law to refuse to recognise employees' organisations, such legislation should only be introduced for the most compelling and convincing reasons. No such reasons have been produced in this case.

**FINANCIAL SERVICES COMMISSION (AMENDMENT No. 2)  
(JERSEY) LAW 199**

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**A LAW** to amend further the Financial Services Commission (Jersey) Law 199 , sanctioned by Order of Her Majesty in Council of the

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*(Registered on the      day of      199 )*

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**STATES OF JERSEY**

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The      day of      199

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

**ARTICLE 1**

In Article 9 of the Financial Services Commission (Jersey) Law 199<sup>1</sup>, as amended -

- (a) paragraph (6) shall be deleted; and
- (b) in paragraph (7) for the words “in this Article” there shall be substituted the words “In sub-paragraph (d) of paragraph (3)”.

**ARTICLE 2**

This Law may be cited as the Financial Services Commission (Amendment No. 2) (Jersey) Law 199 and shall come into force on such day as the States may by Act appoint.

<sup>1</sup> P.163 of 1997.