

STATES OF JERSEY



DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200- (P.19/2005): AMENDMENTS (P.19/2005 AMD.)– COMMENTS

**Presented to the States on 15th March 2005
by the Employment and Social Security Committee**

STATES GREFFE

COMMENTS

The Committee acknowledges that the amendments have been made on behalf of the Transport and General Workers Union as the Regional Secretary stated in the media that they had arranged for their amendments to be lodged by Deputy Southern. The Employment and Social Security Committee has considered each of the 4 amendments in a positive way in the hope that the amendments would improve the draft, but after taking legal advice and considering them in great detail the Committee is unable to support them. The Committee therefore would ask members to reject the amendments for the reasons given below –

- (1) The Committee considers that the amendment lacks clarity and that procedures relating to the Royal Court should not be included in this Draft Law. Members are asked to reject this amendment on the grounds that it is ambiguous in its terminology and inappropriate in its bearing on the processes of the Royal Court.
- (2) The Committee considers that to remove the reference to the handbook may limit the ability of the Tribunal in gathering the relevant evidence for determining a case. This may prove detrimental to either party in the resolution of a dispute and that it is an unnecessary restriction to place on the Tribunal.
- (3) The Committee considers that the rationale for this amendment is difficult to follow and is not confident that the amendment achieves what Deputy Southern intends. As currently drafted, the Tribunal may only consider terms and conditions that have already been agreed or are a minimum requirement in law. However, the amendment widens the power of the Tribunal to declare that a party is not observing a term or condition of employment that the Tribunal thinks should apply.

If accepted, the Tribunal would be empowered to make a declaration that one of the parties is not adhering to a term or condition despite it not being an agreed term or condition. The Committee does not consider this to be consistent with good practice and that it would be inappropriate to give the Tribunal powers of this nature.

- (4) The Draft Law already provides at Article 25(4)(c) sufficient protection to ensure that the codes of practice live up to the Committee's and the States of Jersey's desire not to contravene any international obligations which apply to Jersey. The Policy and Resources Committee, which is in a position to give objective and accurate information and to perform an auditing role, maintains this safety valve. Ultimately the codes are to be approved by the Committee but, as they are to be made by Order, may be annulled by the States.

The Committee understands that the use of the word "applicable" in the amendment may be open to interpretation. Although it is already used at Article 25(4)(c) of the Draft Law, it is in a different context Deputy Southern's amendment could also cause uncertainty about the codes' status where international agreements are under development, however codes ought to remain effective until they are amended. This amendment also may bring in arguments about adherence to international conventions that are not binding on Jersey.

Deputy Southern states one of his reasons for this amendment is that, "there is a danger that the action of proceeding to a ballot for action (the right to strike) could be deemed 'unreasonable' in certain circumstances". Although the final content of the codes will of course depend on the outcome of further public consultation, the Committee believes that the Employment Forum's report makes it clear that what is being proposed for inclusion in the code is a reasonable balloting procedure, applicable to both parties, when a union seeks to ballot its members.

In addition, the Committee is advised that it is undesirable to commit within legislation to adhere to or maintain international obligations. In each instance, the Island's commitment has already been given and it does not require to be repeated.

The Committee considers that all of these amendments for the reasons given above should be rejected.