

**DRAFT JERSEY ADVISORY AND CONCILIATION (JERSEY) LAW 200**

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**Lodged au Greffe on 13th August 2002  
by the Employment and Social Security Committee**

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**STATES OF JERSEY**

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## **European Convention on Human Rights**

The President of the Employment and Social Security Committee has made the following statement -

In the view of the Employment and Social Security Committee the provisions of the Draft Jersey Advisory and Conciliation (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

## **REPORT**

In March 1999, the States approved the establishment of the Jersey Advisory and Conciliation Service, supported by a Tribunal Service (P.227 of 1999) as part of a series of proposals to introduce Minimum Wage and Employment Legislation.

The Bill presented with this report will formally establish the Jersey Advisory and Conciliation Service (JACS).

JACS has the general duty under this Law to promote the improvement of industrial relations in the Island and assist in the settlement of disputes through conciliation and mediation. If necessary, provision within the Law, will permit the office of JACS to appoint officers for the purpose of resolving a particular dispute, whether collective or individual. Should any dispute remain unresolved after conciliation or mediation authority is vested with JACS to refer a matter for arbitration in order that costly industrial action can be avoided whenever possible.

To assist in the avoidance of disputes and to foster best practice within organisations, JACS is empowered in this Law to publish advice and guidance to all parties in an employment relationship. The ability of JACS proactively to enhance industrial relations in the Island will be further supported by enabling provisions in the Law which allow for codes of practice to be issued. Such codes can only be constructed after appropriate consultation has taken place.

To gain the trust and respect required of an industrial relations advisory service it is considered critical that JACS must be viewed as impartial and independent of government at all times. For this reason the attached Law will establish JACS as an independent corporate body, directed by a Board. The constitution of the board and administration of JACS is set out in the schedule to the attached Law.

JACS was set up in 2000 and there will therefore be no additional financial or manpower implications for the States arising from the adoption of this draft Law.

### **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 Committee 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 6th June 2002 the Employment and Social Security Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Employment and Social Security Committee, the provisions of the Draft Jersey Advisory and Conciliation (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

This Law establishes the Jersey Advisory and Conciliation Service (JACS) which has already been established and is operating on an informal and non-statutory basis.

*Article 1* is an interpretation clause.

*Article 2* establishes JACS.

*Article 3* sets out the general duty of JACS to promote the improvement of industrial relations, to assist in the resolution of disputes and to promote good relations between employers and employees in the Island.

*Article 4* enables JACS to assist in the settlement of disputes relating to employment matters.

*Article 5* requires the designation of officers whose functions are to conciliate in employment disputes.

*Article 6* authorizes JACS to refer employment disputes to arbitration, provided certain conditions are fulfilled.

*Article 7* authorizes JACS to give and publish advice on employment issues.

*Article 8* gives JACS the power to make inquiries in relation to general and specific issues and to publish the results.

*Article 9* enables the Employment and Social Security Committee, after consultation with JACS, to issue and revise codes of practice in relation to employment matters. It also lays down the procedure to be followed.

*Article 10* makes provision in the event of non-compliance with a code of practice, and enables a code of practice to be admitted in evidence.

*Article 11* ensures that there cannot be more than one code of practice in relation to a particular issue.

*Article 12* is a general power for the Employment and Social Security Committee to make orders in relation to the matters covered by the Law.

*Article 13* provides the short title of the Law and for the Law to come into force on the seventh day after its registration.

*The Schedule* provides for the constitution and administration of JACS.

Paragraph 1 provides that JACS is to be an independent corporate body, directed by a Board.

Paragraph 2 provides further for the independence of JACS.

Paragraph 3 provides for the appointment of Board members, the chairman of the Board and the execution of documents.

Paragraph 4 prescribes the terms of appointment of Board members.

Paragraph 5 enables Board members' expenses to be paid.

Paragraph 6 provides for the appointment of JACS' staff.

Paragraph 7 gives full power of delegation by the Board to individual members of the Board and of JACS' staff.

Paragraph 8 empowers the States to fund the establishment and running of JACS.

Paragraph 9 gives JACS financial independence from the States.

Paragraph 10 requires the keeping of audited accounts by JACS and sets down a process of financial reporting by JACS to the States.

Paragraph 11 enables JACS to make charges for its services and to retain the proceeds.

Paragraph 12 requires the Employment and Social Security Committee's consent to any borrowing by JACS and enables the

Finance and Economics Committee to lend money, and to guarantee loans, to JACS.

Paragraph 13 enables the Employment and Social Security Committee to control the investment by JACS of its assets.

Paragraph 14 exempts JACS from income tax.

Paragraph 15 is a standard clause exempting the States, Committee members and JACS Board members and staff from civil liability for their acts or omissions unless made in bad faith.

**JERSEY ADVISORY AND CONCILIATION (JERSEY) LAW 200-\_\_\_\_\_**

**ARRANGEMENT OF ARTICLES**

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1. Interpretation.
2. Establishment of Jersey Advisory and Conciliation Service.
3. General duty to promote improvement of industrial relations and the resolution of employment disputes.
4. Conciliation.
5. Conciliation officers.
6. Arbitration.
7. Advice.
8. Inquiry.
9. Issue of codes of practice by the Committee.
10. Effect of failure to comply with Code.
11. Provisions of earlier Code superseded by later.
12. Orders.
13. Citation and commencement.

SCHEDULE - Constitution and Administration of Jersey Advisory and Conciliation Service and its Board.

**JERSEY ADVISORY AND CONCILIATION (JERSEY) LAW 200-\_\_\_\_\_**

**A LAW** to establish machinery for promoting the improvement of industrial relations and to assist in the resolution of employment disputes, and for incidental and connected purposes; sanctioned by Order of Her Majesty in Council of the

\_\_\_\_\_  
(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

**STATES OF JERSEY**

The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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

**ARTICLE 1**

**Interpretation**

(1) In this Law, unless the context otherwise requires -

“Board” means the Board of JACS constituted in accordance with the Schedule;

“Committee” means the Employment and Social Security Committee;

“financial year” means the financial year of JACS, being the period beginning with the day on which Article 2 comes into force and ending with the 31st December in the following year, and each subsequent period of twelve months ending with the 31st December in each year or such other date as the Committee may prescribe by Order;

“function” includes power, authority and duty;

“JACS” means the Jersey Advisory and Conciliation Service established by Article 2;

“member” means member of the Board; and

“employment dispute” means any dispute between an employer and a worker or workers in the employment of that employer which is connected with the terms of employment or with the conditions of labour of any of those workers but does not include a dispute as to the entering into, or failure to enter into, a contract of employment with a person; and in this definition “employment” includes any relationship where one person personally does work or performs services for another where that other person controls the manner in which, and the time at which, the work is done or the services are performed.

(2) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.

(3) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(4) A reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

**ARTICLE 2**

## **Establishment of Jersey Advisory and Conciliation Service**

- (1) There is established a body called the Jersey Advisory and Conciliation Service.
- (2) The provisions of the Schedule shall have effect with respect to JACS.

### ARTICLE 3

#### **General duty to promote improvement of industrial relations and the resolution of employment disputes**

It shall be the general duty of JACS -

- (a) to promote the improvement of industrial relations;
- (b) to assist in the resolution of individual and collective employment disputes; and
- (c) to assist in the building of harmonious relationships between employers and employees, collectively and individually, and thereby improve the performance and effectiveness of organisations.

### ARTICLE 4

#### **Conciliation**

(1) Where an individual or collective employment dispute exists or is apprehended JACS may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance with a view to bringing about a settlement.

(2) The assistance may be by way of conciliation or by other means, and may include the appointment of an employee of JACS or a person other than an employee of JACS to offer assistance to the parties to the dispute with a view to bringing about a settlement.

(3) In exercising its functions under this Article JACS shall have regard to the desirability of encouraging the parties to a dispute -

- (a) to use any appropriate agreed procedures for negotiation or the settlement of disputes; and
- (b) to comply with a relevant code of practice issued under this Law.

### ARTICLE 5

#### **Conciliation officers**

JACS shall designate some of its employees, and may designate persons who are not employees of JACS, to conciliate in individual or collective employment disputes in accordance with this Law and any other enactment (whenever passed) relating to matters which are or could be the subject of proceedings before an industrial tribunal constituted under Article 3 of the Industrial Disputes (Jersey) Law 1956. <sup>[1]</sup>

### ARTICLE 6

#### **Arbitration**

(1) Where an individual or collective employment dispute exists or is apprehended JACS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement through arbitration or mediation conducted by one or more persons appointed by JACS for that purpose (not being members or employees of JACS).

(2) In exercising its functions under this Article JACS shall consider the likelihood of the dispute being settled by conciliation.

(3) Where there exist agreed appropriate procedures for negotiation or the settlement of disputes between the parties to the employment dispute, JACS shall not refer a matter for settlement to arbitration or mediation under this Article



unless -

- (a) those procedures have been used and have failed to result in a settlement; or
  - (b) there is, in JACS' opinion, a special reason which justifies arbitration or mediation under this Article as an alternative to those procedures.
- (4) Where a matter is referred to arbitration -
- (a) if more than one arbitrator or arbiter is appointed, JACS shall appoint one of them to act as chairman; and
  - (b) the award may be published if JACS so decides and all the parties consent.
- (5) The Arbitration (Jersey) Law 1998<sup>[2]</sup> shall not apply to an arbitration under this Article.

#### ARTICLE 7

##### **Advice**

- (1) JACS may issue such information and give such advice as it thinks appropriate on matters concerned with industrial relations.
- (2) Information or advice given under paragraph (1) may be given on request or otherwise.
- (3) JACS may also publish general advice on matters concerned with industrial relations or established employment policies.

#### ARTICLE 8

##### **Inquiry**

- (1) JACS may inquire into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.
- (2) The findings of an inquiry under this Article, together with any advice given by JACS in connection with those findings, may be published by JACS if -
  - (a) it appears to JACS that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question inquired into; and
  - (b) after sending a draft of the findings to all parties appearing to be concerned and taking account of their views, it thinks fit.

#### ARTICLE 9

##### **Issue of codes of practice by the Committee**

- (1) For the purpose of promoting the improvement of industrial relations the Committee may, after consultation with JACS and with such persons as it considers will be affected, or representatives of such persons, issue such codes of practice as in its opinion are suitable for that purpose.
- (2) When the Committee proposes to issue a code of practice it shall, after consultation with JACS and with such other persons as it has reason to believe will be affected, or with representatives of such persons, prepare and publish a draft of the code, and shall consider any representations made to it about the draft and may thereafter modify the draft accordingly.
- (3) Where a code of practice is issued under paragraph (1), the Committee shall publish in the Jersey Gazette a notice -
  - (a) identifying the code and stating the date on which approval of it by the Committee is to take effect; and
  - (b) stating where the code may be inspected.

(4) The Committee may from time to time revise the whole or any part of any code of practice prepared by it in pursuance of this article.

(5) When the Committee proposes to revise a code of practice it shall, after consultation with JACS and with such other persons as it has reason to believe will be affected, or with representatives of such persons, prepare and publish a draft of the revision, and shall consider any representations made to it about the draft and may thereafter modify the draft accordingly.

(6) Where a code of practice is revised under paragraph (4), the Committee shall publish in the Jersey Gazette a notice -

- (a) identifying the revised code and stating the date on which approval of it by the Committee is to take effect; and
- (b) stating where the revised code may be inspected.

#### ARTICLE 10

##### **Effect of failure to comply with Code**

(1) A failure on the part of any person to observe any provision of a code of practice issued under this Law shall not of itself render him liable to any proceedings.

(2) In any proceedings before a court or an industrial tribunal constituted under Article 3 of the Industrial Disputes (Jersey) Law 1956,<sup>[3]</sup> a code of practice issued under this Law shall be admissible in evidence, and any provision of the Code which appears to the court or the tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

#### ARTICLE 11

##### **Provisions of earlier Code superseded by later**

(1) If the Committee is of the opinion that the provisions of a code of practice to be issued by it under this Law will supersede the whole or part of a Code previously issued under this Law it shall in the new Code state that on the day on which the new Code comes into effect the old Code or a specified part of it shall cease to have effect.

(2) The provisions of paragraph (1) shall not affect any transitional provisions or savings which are to come into force when the new Code is brought into effect.

#### ARTICLE 12

##### **Orders**

(1) The Committee may by Order make provision for the purpose of carrying this Law into effect.

(2) An Order made under this Law may -

- (a) make different provision in relation to different cases or circumstances; and
- (b) contain such transitional, consequential, incidental or supplementary provisions as appear to the Committee to be necessary or expedient for the purposes of the Order.

(3) The Subordinate Legislation (Jersey) Law 1960<sup>[4]</sup> shall apply to Orders made under this Law.

#### ARTICLE 13

##### **Citation and commencement**

This Law may be cited as the Jersey Advisory and Conciliation (Jersey) Law 200- and shall come into force on the

seventh day following its registration.

## *SCHEDULE*

### **(Article 2)**

#### **Constitution and Administration of Jersey Advisory and Conciliation Service and its Board**

**1.**-(1) JACS shall

- (a) be a body corporate, of which the incorporators are the members of its Board, with perpetual succession and a common seal; and
  - (b) be directed by a Board constituted in accordance with paragraphs 3 to 5.
- (2) JACS may -
- (a) sue and be sued in its corporate name;
  - (b) enter into contracts and acquire, hold and dispose of any property; and
  - (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

**2.**-(1) The functions of JACS, and those of its employees, shall be performed on behalf of the States, but not so as to make it subject to directions of any kind from any Committee or Member of the States as to the manner in which it is to exercise its functions under any enactment.

(2) Nothing in any enactment shall prevent or penalise the disclosure to JACS, for the purposes of the exercise of any of its functions, of information lawfully obtained by a Committee, administration or department of the States.

(3) JACS shall maintain such offices in the Island as it thinks fit for the purposes of discharging its functions under any enactment.

#### **The Board of JACS**

**3.**-(1) Subject to the following provisions, the Board shall consist of not more than seven members who shall not be members of the States.

(2) On the commencement of this Law the Board shall be constituted of members appointed by the Committee on the recommendation of the Employment Forum, but thereafter members shall be selected and appointed by the Board subject to the approval of the Committee, who shall immediately inform the States of any such appointment.

(3) Before making an appointment under sub-paragraph (2) the Board shall consult such organisations representing employers and workers as the Board considers appropriate, and shall only appoint such persons as appear to them to have skills, experience and ability in industrial relations and employment matters.

(4) The Board shall determine its own procedure, including the quorum necessary for its meetings.

(5) The Board shall each year choose a member to act as chairman, and another to act as deputy chairman.

(6) The validity of proceedings of the Board shall not be affected by any vacancy among the members of the Board or by any defect in the appointment of any of them.

(7) The fixing of the common seal of JACS shall be authenticated by the signature of a person authorized by the Board to sign on behalf of JACS.

(8) A document purporting to be duly executed under the seal of JACS shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

#### **Terms of appointment of members of Board**

**4.**-(1) The members of the Board shall hold and vacate office in accordance with their terms of appointment

subject to paragraphs (2) and (3).

(2) A person shall not be appointed to the Board for a term exceeding four years, but previous membership shall not affect eligibility for re-appointment.

(3) A member may at any time resign his membership, and the chairman or a deputy chairman may at any time resign his office as such, by notice in writing in accordance with the terms of his appointment.

(4) If a member -

- (a) has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board;
- (b) has neglected the duties of a member;
- (c) has become bankrupt or made an arrangement with his creditors;
- (d) reaches the age of 70;
- (e) becomes a member of the States;
- (f) is incapacitated by physical or mental illness; or
- (g) is otherwise unable or unfit to discharge the functions of a member,

the Board may declare his office as a member to be vacant and shall notify the declaration to the members in such manner as the Board thinks fit, whereupon the office shall become vacant.

#### **Expenses of members of Board**

5. JACS shall reimburse to the members of its Board such travelling and other expenses actually incurred as may be determined by the Board.

#### **Staff of JACS**

6.-(1) JACS may appoint or contract for the provision of such staff as it may determine.

(2) Appointments made under sub-paragraph (1) shall be made on such terms as to remuneration and other conditions of service as the Board shall determine.

(3) JACS shall make such arrangements as it considers necessary for the payment of pensions and associated benefits to its employees and their dependants.

#### **Delegation**

7.-(1) The Board may delegate any of the functions of JACS under this or any other enactment wholly or partly to

- (a) the Chairman of the Board;
  - (b) another member;
  - (c) an employee of JACS; or
  - (d) a committee whose member or members are drawn only from the members of the Board and employees of JACS.
- (2) Nothing in this paragraph shall authorize the Board to delegate -
- (a) the power of delegation conferred by this paragraph; or

- (b) the function of reviewing any of its decisions.
- (3) The delegation of any functions under this paragraph -
  - (a) shall not prevent the performance of those functions by the Board or JACS itself; and
  - (b) may be amended or revoked by the Board.

#### **General financial provisions**

**8.**-(1) The States may make a grant to JACS from their annual income towards the expenses of the formation of JACS and its initial expenses.

(2) In respect of each financial year, the States may make a grant to JACS from their annual income towards JACS' expenses in performing any of its functions.

(3) The amount of any grant referred to in sub-paragraph (1) or (2) shall be determined by the Finance and Economics Committee on the recommendation of the Committee made after consultation with JACS.

(4) In determining that amount, the Finance and Economics Committee shall have regard to the actual financial position and the projected financial position of JACS.

(5) In making that recommendation, the Committee shall have regard to the actual financial position and the projected financial position of JACS.

- (6) JACS may pay to -
  - (a) persons appointed under Article 4 who are not employees of JACS; and
  - (b) arbitrators or arbiters appointed by JACS under any enactment,

such fees and travelling and other allowances as may be specified by the Committee by Order.

#### **Public Finances (Administration) (Jersey) Law 1967**

**9.** For the purposes of Article 8 of the Public Finances (Administration) (Jersey) Law 1967, <sup>[5]</sup> none of the monies received by JACS shall be received on behalf of the States and JACS shall not be an establishment under the supervision or administration of the States.

#### **Annual report and accounts**

**10.**-(1) JACS shall

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare accounts in respect of each financial year and provide these to the Committee as soon as practicable after the end of the financial year to which they relate, but in no case later than four months after the end of that year.

(2) The Committee shall lay a copy of the accounts so provided before the States as soon as practicable after the Committee receives the report.

- (3) The accounts of JACS shall -
  - (a) be audited by auditors appointed in respect of each financial year by the Committee; and
  - (b) be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of JACS for the period to which they relate and of the state of JACS' affairs at the end of the period.

(4) Articles 113 to 113E of the Companies (Jersey) Law 1991<sup>[6]</sup> shall apply to an auditor and his appointment as if JACS were a company within the meaning of those Articles and the appointment were under Article 109 of that Law.

(5) JACS shall prepare a report on its activities in each of its financial years.

(6) JACS shall provide the Committee with the report referred to in sub-paragraph (5) as soon as practicable after the end of the financial year to which the report relates, but in no case later than four months after the end of that year.

(7) The Committee shall lay a copy of the report so provided before the States as soon as practicable after it receives the report.

#### **Fees and Charges**

**11.** JACS may charge, retain and apply in the performance of its functions -

(a) fees and charges of such amounts, paid by such persons, and paid in such a manner, as may be specified by the Committee by Order after consultation with the Board, by or under this or any other enactment;

(b) such fees and charges (not consistent with this or any other enactment) of such amounts, paid by such persons, and paid in such a manner, as may be decided by JACS in respect of any service, item, or matter, that does not arise under this or any other enactment; and

(c) such fees and charges (not consistent with this or any other enactment) as may be agreed between JACS and any person for whom JACS provides advice, assistance or other services under this or any other enactment, in respect of the advice, assistance or other services.

#### **Consent to Borrowing**

**12.**-(1) JACS shall not borrow money without the consent of the Committee.

(2) The Finance and Economics Committee may, on such terms as it may determine, on behalf of the States -

(a) guarantee the liabilities of JACS; and

(b) lend money to JACS.

(3) The Finance and Economics Committee may act under paragraph (2) only on the recommendation of the Committee.

#### **Guidelines on investment**

**13.** JACS shall, in investing any of its funds, comply with any guidelines specified by the Committee.

#### **Exemption from Income Tax**

**14.** The income of JACS shall not be liable to income tax under the Income Tax (Jersey) Law 1961.<sup>[7]</sup>

#### **Limitation of liability**

**15.**-(1) A person or body to whom this paragraph applies shall not be liable in damages for anything done or omitted in the performance or purported performance of any functions of JACS conferred by or under this Law or any other enactment, or any other functions conferred by or under this Law, unless it is shown that the act or omission was in bad faith.

(2) This paragraph applies to -

(a) the States;

(b) the Committee or the Finance and Economics Committee, any member of the Committee or of the Finance and Economics Committee, or any person who is, or is acting as, an officer, employee or agent of the Committee or of the Finance and Economics Committee or performing any function on behalf of the

Committee or of the Finance and Economics Committee; and

- (c) JACS, any member of the Board, or any person who is, or is acting as, an officer, employee or agent of JACS or the Board or performing any function on behalf of JACS or the Board.

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[1] Tome VIII, page 644.

[2] Volume 1998, page 441 and Volume 1999, page 521.

[3] Tome VIII, page 644.

[4] Tome VIII, page 849 and Volume 2001, pages 3 and 4.

[5] Volume 1966-1967, page 593.

[6] Volume 1990-1991, page 982 and Volume 2002, page 255.

[7] Volume 1961-1962, pages 197 and 443, Volume 1963-1965, pages 97, 143, 178, 189, 423 and 454, Volume 1966-1967, page 523, Volume 1968-1969, pages 38 and 219, Volume 1970-1972, pages 209, 305 and 382, Volume 1973-1974, page 275, Volume 1975-1978, pages 47, 148 and 257, Volume 1979-1981, pages 16, 157, 297 and 383, Volume 1982-1983, page 46, Volume 1984-1985, page 76, Volume 1986-1987, pages 192 and 208, Volume 1988-1989, pages 222 and 380, Volume 1990-1991, pages 96, 432 and 1088, Volume 1992-1993, pages 36 and 121, Volume 1994-1995, pages 220 and 366, Volume 1996-1997, pages 264, 643 and 652, Volume 1998, pages 3 and 259, Volume 1999, pages 209, 390, 403 and 418 and Volume 2001, pages 123 and 145.