STATES OF JERSEY

DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200-

Lodged au Greffe on 1st February 2005
by the Employment and Social Security Committee

STATES GREFFE

Jersey

DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200-

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 Employment Relations (Jersey) Law 200- are compatible with the Convention Rights.

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

REPORT

Introduction

The overriding objectives of the legislation and its supporting framework are to –

1. Support fairness in the workplace.
2. Encourage discussion and resolution of disputes as quickly as possible.
3. Enable a balance in the relationship between employer and employee.
4. Provide a minimalist legal framework which avoids potential for expensive litigation.
5. Be simple and appropriate to a small community, meeting the needs of Jersey.

Guiding principles

The main aims of the draft Law are to –

1. Provide a straightforward system of legal identification and registration of trade unions and employer associations, and to accord such bodies clear legal status.
2. Create a legal dispute resolution process which supports and develops good industrial relations in the Island, with the aim of reducing the likelihood of disputes and enabling early resolution of disputes by due process where they occur, using the Employment Tribunal where necessary and incorporating elements of the current Industrial Disputes (Jersey) Law 1956.
3. Support codes of practice to describe good and reasonable employment relations practice to supplement the minimalist legal approach provided in the draft Law.

The fundamental principle is that people can, and do, withdraw their labour and have a common law right to association, so long as the association is for a legal purpose. There is therefore a need to provide a clear process by which disputes are handled in order to reduce conflict and minimise industrial action.

Law drafting

During 1998, the first stage of the legislative programme commenced when a law drafting brief on Minimum Wage was submitted to the Law Draftsman. When it had been confirmed that this legislation in isolation would be unworkable, the Committee agreed to develop a consolidated "Employment Law" providing statutory minimum standards and the necessary structure for dispute resolution.

After full consultation on an appropriate legal framework, the Committee lodged a Report and Proposition (P.99/2000), putting forward a phased approach to the introduction of a range of employment issues. The first phase was intended to concentrate on the basic requirements to underpin a minimum wage system. Measures dealing with trade union issues had been proposed to be included in Phase 2 of the employment legislation however, when the States debated the proposals in December 2000, an amendment was brought from the Industries Committee which required Phase 1 to introduce new legislation or amend existing legislation, to provide for the regulation of employee-employer relations.

Following extensive public consultation on a framework for good industrial relations in the Island (detailed further below), the Committee lodged the Report on Employment Relations Legislation (R.C.28/2002), on which the law drafting brief was based.

Research and consultation

To examine the matter of trade union legislation and the regulation of employer-employee relations in more detail, the Committee undertook the necessary research and published a consultation document "Fair Play in the Workplace: Trade Union Issues" in September 2001. This report included a comparative analysis of legislation and systems present in other jurisdictions, particularly the smaller ones, but also highlighted the general approaches worldwide and commented on –

- the status of trade unions;
- trade union regulation and governance;
- regulation of employee-employer relations;

- definition and regulation of legitimate industrial action;
- institutional frameworks.

The outcome of the public consultation was that, although there were differing views, there was a measure of consensus on the general approach to new legislation; that it should be non-adversarial, with minimal legislation, clear definitions and a simple registration process, which was published in the Committee's R.C.28/2002.

It was considered that rather than adopt the U.K. approach which puts the emphasis on procedures to control any industrial action (i.e. the outcome of a dispute) and voluntary routes to dispute resolution supported by a court structure, an approach should be adopted that builds on the existing systems in the Island, developing process and structure that help reduce the likelihood of disputes and enable early resolution when they do occur, which also avoids excessive litigation.

On the basis of R.C.28/2002, a draft Law was produced, which the Committee released for public consultation in September 2004. Simultaneously the Employment Forum released a consultation document on the content of the codes of practice to accompany the Employment Relations Law. The Employment Forum also incorporated the Committee's 2001 consultation responses and documentation from other jurisdictions as a basis for a consultation paper on the content of the codes of practice.

Following this second round of consultation, the Committee took into account the responses received on the draft Law before amending and agreeing the attached draft Law for States debate. The Employment Forum also provided a report for the Committee on the basis of consultation responses on the content of the codes of practice (which is attached at Appendix 1).

On the basis of the Forum report, the Committee will produce draft codes of practice that will be consulted on further with JACS, the Employment Forum, the Policy and Resources Committee and the public generally, before the draft Employment Relations Law comes into force.

Provisions

This draft Law provides for –

1. the registration of trade unions and employers' associations;
2. the legal status, including the obligations and immunities, of trade unions and employers' associations, and their officials and members;
3. the resolution of collective employment disputes between employers and employees so as to promote the development of good working relationships between them;
4. the approval of codes of practice;

1. The registration of trade unions and employers' associations

The Law is intended to provide a simple system of registration, which although appears detailed in the draft Law, a Registrar, guidance booklets, and application forms will be available to assist the process. Representative unions and associations will be required to provide information (including the name and address of the union, names of officials, rules and procedures, e.g. on balloting) to verify their status and become registered. The Register will be maintained and be available for inspection by the public.

2. The legal status, including the obligations and immunities, of trade unions and employers' associations, and their officials and members

At present, trade unions and associations are not defined in Law, nor do they hold legal status. They are therefore not subject to the legal rights or responsibilities of other legal entities. The draft Law clarifies the status of such bodies as legal entities, with a definition wide enough to cover most trade unions, employer associations and staff associations.

It also grants limited immunities for registered trade unions from liability in respect of industrial action. If an approved code of practice provides for the holding of a ballot of members, and the action is not taken in accordance with such a ballot (i.e. a majority of those balloted do not support the doing of the act) there is no protection from liability in tort. A trade union is also not protected from liability in tort for action that is defined in an approved code of practice as conduct that is not reasonable when taken in respect of an employment dispute.

3. The resolution of collective employment disputes between employers and employees so as to promote the

development of good working relationships between them

It was acknowledged that a speedy and effective dispute management process should be encouraged, that does not provoke action, but facilitates the resolution of disputes, which is a role in which JACS plays a vital part. Previous experience of the Industrial Disputes Law suggests that the process of resolution is likely to be iterative, encouraging continuing negotiation where possible and not fully exhausted.

It is accepted that parties cannot be forced to negotiate and that the outcomes are more successful from voluntary dispute resolution processes, so the initial stages of resolution are voluntary with encouragement being provided through the process described in the codes of practice and the availability of independent conciliation through JACS. However, reference of a "collective employment dispute" may be made to the Tribunal in certain circumstances.

4. The approval of codes of practice

In keeping with a minimalist legal approach, the Law provides for the issue of codes of practice to support and supplement the legislation, which both describe employment relations 'best practice' and outline what is to be considered reasonable procedure for the purpose of giving immunities.

If a dispute were to reach the final stage in the dispute resolution process, the Employment Tribunal would be empowered to take into account the extent to which the parties had observed the appropriate code of practice when reaching a decision. As such, a party who acted unreasonably, without regard to the codes, could be held to have acted outside the spirit of the legislation.

Framework

The following provides a detailed explanation of what is provided in each Part of the draft Law.

Part 1 – INTRODUCTION

Part 1 defines various words and expressions used in the draft Law, including *"employer"*, *"employee"*, *"trade union"*, *"employers' association"*, and *"collective employment dispute"*. It also provides for the forms in which applications for registration may be made.

PART 2– REGISTRATION OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

This part of the Law provides that a trade union or employers' association that is registered under the draft Law may pursue any lawful purpose. It provides for the appointment of a registrar of trade unions and employers' associations, and requires the registrar to maintain registers of unions and associations, that are available for public inspection.

For this purpose, it provides for the Registrar to determine applications to register, cancel or amend registration, and also for appeals to the Royal Court against decisions by the Registrar.

PART 3– STATUS OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Part 3 of the draft Law confers or imposes on trade unions and employers' associations, and on officials and members of those bodies, legal characteristics, rights and obligations that they do not have in customary law.

The purposes of a trade union or employers' association and its rules will not be unlawful by reason only that they are in restraint of trade. The draft Law also grants immunities from liability in tort, and from criminal liability, in respect of industrial action. A "tort" is a civil wrong – for example, intimidation, interference with business, inducing breach of contract – as distinct from a criminal offence.

The immunities that are granted against liability in tort relate to acts that induce the breaking of contracts or threatened breaches of or interference with contracts. They also relate to things done by 2 or more persons acting in agreement or combination, where such conduct would not be tortious if it were that of a person acting alone.

The immunity that is granted against criminal liability is in respect of any act done by 2 or more persons in agreement or combination, where such an act would not be a criminal offence if done by a person acting alone.

However, these immunities are limited in that they do not apply to the union or association (or its officials) if –

- the union or association is not registered under the Law, or;
- a code of practice provides that industrial action must be sanctioned by a ballot of members, or defines conduct that is not reasonable to take in respect of an employment dispute.

A registered trade union's liability to pay compensation for a tort is limited to £10,000 or to such other amount as

the States may prescribe by Regulations. This limitation does not apply to liability for personal injury arising from negligence, nuisance or breach of duty, or liability for breach of duty relating to property.

PART 4 – RESOLUTION OF COLLECTIVE EMPLOYMENT DISPUTES

Part 4 of the Law gives the Employment Tribunal its jurisdiction to resolve collective employment disputes, in two circumstances.

1. One is where all the parties involved in the dispute consent to its doing so.
2. The other is where all other available procedures (such as procedures set out in collective agreements, codes of practice or established procedures within that industry) have been applied unsuccessfully, AND one of the parties is acting unreasonably in the way in which that party is or is not complying with an available procedure.

A *"collective employment dispute"* means a dispute between an employer and employees, where the latter are represented by a trade union, and there is a collective agreement between the employer and the union, and the dispute relates wholly or mainly to one or more of a number of specified topics. Broadly, these are differences concerning terms of employment, the conditions in which employees are required to work and the rights or duties of the employer or employees.

The Employment Tribunal may make a declaration as to any of the following matters –

(i) whether a party to the dispute is observing terms or conditions of employment;

(ii) the interpretation of a collective agreement; or

(iii) the incorporation of terms or conditions of employment into the individual contracts of employment of the employees concerned. Where the Tribunal has made a declaration that a relevant term or condition is to be incorporated into individual contracts of employment, it shall become part of those contracts until subsequently varied or replaced by agreement, negotiation or a further declaration.

The Tribunal's declaration in a collective employment dispute will not itself be enforceable in a court. However, if the declaration incorporates any term or condition in an individual contract of employment, that term or condition may be enforced in a court, in the usual way, by a party to the contract. The Tribunal may in its discretion adjourn the proceedings, in an appropriate case, to encourage settlement.

PART 5 – OTHER PROVISIONS

Part 5 enables the Employment and Social Security Committee, by Order, to approve codes of practice relating to employment relations.

In particular, codes of practice may deal with recognition of trade unions for collective bargaining purposes, ballots, conduct that is or is not reasonable in employment disputes, recommended procedures for the resolution of such disputes, and any other such relevant matters.

Before approving a code, the Committee must publish a notice inviting interested persons to inspect the proposed code and make representations. It must also consult the Jersey Advisory and Conciliation Service, the Employment Forum, the Policy and Resources Committee regarding international agreements and obligations that apply to Jersey, and any other persons who will, in the view of the Committee, be affected. In deciding whether or not to approve the code of practice, the Committee must consider all representations received.

An approved code of practice cannot come into force sooner than 28 days after the Order is laid before the States, which may annul it under the Subordinate Legislation (Jersey) Order 1960 and must not contrive any international obligations that are binding on Jersey.

A failure to observe an approved code of practice does not in itself make a person liable to any proceedings. However, where an approved code defines conduct as unreasonable in an employment dispute, a trade union will not be protected from liability in tort for such conduct.

This Part also enables the States to make Regulations including, for example, provisions for application and registration forms; application fees; accounting procedures for trade unions and employers' associations; returns of information by unions and associations to the registrar, and the provision of information to their members, however no such Regulations are planned at this stage.

This Part also amends other enactments, the details of which are contained in the Schedule to the draft Law (detailed below).

SCHEDULE – AMENDMENTS TO OTHER ENACTMENTS

Amendments are made to the Employment Law and the JACS Law, some of which are consequential on the provisions of the Employment Relations Law, and other amendments are made for purposes that are not related to the present draft Law.

(1) Amendments to the JACS Law that are connected with the Employment Relations Law

The definitions relating to the concept of employment are altered to accord with those in this present draft Law and the definitions of the expressions "collective employment dispute" and "individual employment dispute" are to be included in the JACS Law. Articles 9, 10 and 11 of the JACS Law, relating to codes of practice for better employment relations, are repealed, as they are now provided for in this present draft Law.

(2) Amendments to the Employment Law that are connected with the Employment Relations Law

Definitions are altered to accord with the Employment Relations Law and the JACS Law by repealing the existing definitions of "employ", in the Employment Law, and inserting new definitions of "employer" and "employee".

Definitions of the expressions "trade union", "employers' association", "collective employment dispute" and "individual employment dispute" are included and the definitions of "collective agreement" and "employment dispute" are widened.

Article 65 of the Employment Law 2003 is widened to provide that the dismissal of an employee is automatically unfair if a principal reason for it is that the employee had taken part or proposed to take part in industrial action that is not specified in a code of practice approved under this draft Law as unreasonable conduct.

In consequence of the introduction by this present draft Law of a resolution procedure for collective disputes, the Employment Law is revised to apply only to individual disputes.

(3) Other amendments that are not connected with the Employment Relations Law are made to the Employment Law

New Articles are inserted in the Employment Law to enable the Employment and Social Security Committee to approve codes of practice for the purposes of that Law, in the same way as it may approve codes of practice under the present draft Law.

Article 10 of the Employment Law, which relates to weekly rest periods, at present provides that an employer and an employee may agree to provide for such periods on a fortnightly basis instead of the weekly basis if the employer and employee so agree. On the recommendation of the Employment Forum, this provision is amended so that the agreement must be made via a 'relevant agreement' (i.e. in a collective agreement that forms part of the employee's contract with the employer or in some other agreement that is legally enforceable as between them).

In order to provide for serious 'operational urgency' situations, on the recommendation of the Employment Forum, Article 10 of the Employment Law is amended to enable the States to make Regulations in future specifying circumstances in which an employee will not be entitled to a rest period.

The Employment Law is amended to provide that no award by the Tribunal under the Employment Law (for example, in relation to an individual contract of employment) shall have the effect of compelling a person to work.

The Employment Law gives an employee the right not to be dismissed unfairly, however this right does not normally arise until the employee has been employed continuously for a qualifying period of at least 26 weeks and that protection against unfair dismissal does not apply if the employee has reached retiring age. The Employment Law provides various 'automatically unfair' reasons for dismissal (including dismissal on the grounds of union membership or non membership, and the assertion of a statutory right) for which the qualifying period and age limit do not apply. The amendment provides that the 26-week qualifying period will not be required for protection against unfair dismissal when the employee is dismissed for reasons related to his or her membership of or activities in a trade union, or to his or her redundancy (i.e. the employee may claim unfair dismissal from day one of employment) and also the age limit does not apply, so an employee may claim unfair dismissal after the normal retiring age.

The Employment Law currently provides the 'two-thirds rule', which provides that where an employee is engaged on contract for a fixed term of 26 weeks or less, the right to protection against unfair dismissal

applies when the employee has served at least two-thirds of that fixed term. On the recommendation of the Employment Forum, an amendment to this provision requires that to become entitled to such protection, the employee must have served at least 13 weeks of the fixed term.

Conclusion

Whilst new legislation and associated codes of practice will provide a framework for encouraging good practice and timely management of disputes, they must be underpinned by a culture in Jersey which supports the enhancement of good employment relations. JACS will continue to have a key role to play here both in the education process and, when appropriate, as a professional, independent body which can help the parties resolve their differences.

The approach provided in the draft Law, through the interrelationship with the Employment Law and the JACS Law, has an overall benefit in that all of the agencies are to be involved in the resolution of both individual and collective disputes, satisfying a strategic objective of providing a straightforward and uncomplicated framework of law and process.

The 2001 Fair Play in the Workplace: Trade Union Issues consultation document stated that, *"it could be argued that, as most trade unions are part of, or affiliated, to UK unions at present, the UK model is one that they and their legal advisers are familiar with and should be adopted for Jersey. However, it could equally be argued that the Island's businesses (including many international businesses as well as local ones) are not used to operating under the UK law nor could the Island afford potentially expensive litigation which that type of system may throw up."*

Trade union legislation enacted in Jersey must meet the needs of a small jurisdiction, where approximately 80% of the Island's employers employ less than 10 employees. Any new framework of legislation should incorporate the existing culture of negotiation and conciliation, established through the 1956 Industrial Disputes Law, and which is also promoted elsewhere in the world, as well as meeting international requirements, such as ILO Conventions and Human Rights legislation.

The Committee has been advised that the Law as drafted does not contravene any international obligations that are binding on Jersey, including relevant International Labour Organisation Conventions. The draft Law also provides that before approving codes of practice, the Committee must consult the Policy and Resources Committee in respect of international agreements and obligations that relate to employment relations and are applicable to or binding on Jersey.

Whilst awaiting Privy Council approval of the draft Employment Relations Law, the Committee will continue to consult on the draft codes of practice, so that a consensus approach can be achieved on the contents, and a full employment relations package of interrelated codes and legislation are introduced in 2005, shortly after the Employment Law.

The Committee would stress the importance of the States approving an Employment Law Appointed Day Act to bring the Law into force on 1st April 2005, as it is imperative that employees' and employers' expectations are met and, in particular, that the minimum wage is effective from that date.

Resource and financial or manpower Statement

It was stated in the Report accompanying the Employment (Jersey) Law 2003 that a budget of £200,000 was originally allocated to the Employment and Social Security Committee for the setting up and running of JACS and the Employment Tribunal, as detailed in the Minimum Wage Report and Proposition (P.227/1998). The Committee is confident that the existing budget levels remain adequate for the effective delivery of this package of Laws.

The Report also stated that internal savings within the Department would be made to cover the additional compliance and enforcement responsibilities of this legislation through restructuring and changes to working practices. It is envisaged that a new part-time post of Clerk to the Tribunal will be required. However, additional manpower is not required for the post of Registrar as the function will be absorbed into existing posts.

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 26th January 2005 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 Employment Relations (Jersey) Law 200- are compatible with the Convention Rights.

APPENDIX TO REPORT

Report to the Employment and Social Security Committee
on the Codes of Practice
to accompany the
Draft Employment Relations (Jersey) Law 200-

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Section 1 – Introduction

Report from the Employment Forum Chairman

The Employment Forum has been instructed by the Employment and Social Security Committee to prepare a report on the necessary Codes of Practice to accompany the Employment Relations Law.

This role is a little different to the role we have undertaken in the past, for on this occasion the Employment Forum has not had an active involvement with the content of the law, as has been the case previously, where the Forum have been instructed to prepare recommendations following a comprehensive consultation exercise, which have then, generally speaking, been translated into primary legislation and regulations, within the Committee's framework. On this occasion, the Employment and Social Security Committee has chosen to undertake the consultation on the Law itself, whilst the Forum consulted on the codes of practice.

Codes of Practice, by their very nature have to reflect the legislation they are supporting, but due to time constraints, the Forum's consultation was released at the same time as the Employment and Social Security Committee's own consultation on the Employment Relations Law. Following the consideration of comments from interested parties, the Committee have reviewed parts of the initial proposals with the inevitable consequence that there are now parts of the draft Law which were not included within the Forum's consultation; issues which may well be of interest to both employee and employer groups.

The remit the Forum has set itself is to seek a consensus amongst our members, having full regard to the views that have been expressed during the consultation period. The unique makeup of the Forum (being made up of 3 independent members, 3 with an employee interest and 3 with an employer interest), enables us to attempt to come to a view on what can often be contentious issues with, we hope, a common sense, pragmatic result which parties who often have a widely differing approach to the employment relationship can accept and work with. This is the strength that the Employment Forum has, and we believe, has been able to bring to the Employment Legislation debate.

It was therefore with some concern that we saw the press release which was, we understand, prepared by the Transport and General Workers Union, declaring that the union movement was united in its opposition to the contents of the draft Employment Relations Law. This placed the individual members of the Forum, and particularly those with an employee interest, in a somewhat difficult position, for it would become increasingly difficult for the Forum to reach a consensus decision, when organisations which some members of the Forum are active members of, are actively opposing the draft Law on which we were to base the Codes of Practice. We were also unanimous in our concern that the Forum's role as an independent body could become increasingly compromised should we make recommendations whilst the matter was the subject of such conflicting and unresolved views.

We have therefore produced a report accurately reflecting the outcomes of our consultation, in order to allow the Employment and Social Security Committee to create the Codes of Practice which will enable more consultation to take place on the content of the Codes in the light of the States debate on the Employment Relations Law. We hope that the views we have elicited will be helpful to this process.

Richard Plaster
Chairman of the Employment Forum

Employment Forum Members

Wendy Malorey
Melvin Le Feuvre
Tom Binet
Alison Mellor

Tina Palmer
Billy Doyle
Sally Johnson
Brendan Renehan

Section 2 – Background

As stated in the introduction, there are considerable differences between the Employment Relations draft Law as consulted upon by the Committee, and the current draft which has been amended following consideration of the consultation responses, in preparation for States debate.

The provisions in the draft Law allowing the Committee to approve codes of practice relating to employment relations are as follows –

- Before approving a code of practice, the Committee must publish a notice inviting interested persons to inspect the proposed code and make representations. In deciding whether or not to proceed to approve the code of practice, the Committee must consider all representations received, including those from JACS, the Forum and any other persons as will be affected.
- Approved codes of practice are admissible in evidence and, where relevant, must be taken into account in determining a question before a court or the Employment Tribunal. A failure to observe an approved code of practice does not in itself make a person liable to any proceedings.

The amendments that have been made since the consultation draft was issued provide a more robust basis for the approval of codes and reinforces their function. The amendments are –

- Codes are to be made by Order, which means that an approved code of practice cannot come into force sooner than 28 days after the Order is laid before the States, which may annul it under the Subordinate Legislation (Jersey) Order 1960.
- A code cannot be approved that contravenes an international obligation that is binding on Jersey.
- The Committee may approve codes of practice specifically relating to recognition of trade unions, ballots, conduct that is or is not reasonable in employment disputes, and recommended procedures for the resolution of such disputes, and any other such relevant matters.
- Immunities are granted for trade unions from liability in tort in respect of industrial action. However immunities are limited in certain cases, one of which is that if an approved code of practice provides for the holding of a ballot of members, and the action is not taken in accordance with such a ballot (e.g. a majority of those balloted do not support the doing of the act) there is no protection from liability in tort. A trade union is also not protected from liability in tort for action that is defined in an approved code of practice as conduct that is not reasonable when taken in respect of an employment dispute.

The amended draft of the Law also provides the following additional provisions –

- The definition of a "collective employment dispute" is limited and is now defined as a dispute between an employer and employees, where the latter are represented by a trade union, and there is a collective agreement between the employer, and the union and the dispute relates wholly or mainly to one or more of a number of specified topics.
- The Employment Tribunal's jurisdiction is more limited, in that it may make a declaration in a collective employment dispute, however that declaration will not itself be enforceable in a court. If the declaration incorporates any term or condition in an individual contract of employment, that term or condition may be enforced in a court, in the usual way, by a party to the contract.

Given the recent changes to the draft, particularly the provision of immunities, it is essential that each of the codes of practice addresses what would be considered "reasonable" and "unreasonable" behaviour and to ensure that the provisions fit within the framework of the final draft of the Law.

It is important that the codes are appropriate for employment in the public and private sectors of the Island, irrespective of their function, nature or size. The Forum would also emphasize the importance of providing codes of practice that are not overly prescriptive and provide a sensible and suitable process based on fundamental principles.

Section 3 – Other Jurisdictions

In addition to the 'Fair Play in the Workplace: Trade Union Issues' consultation document and its responses, the Forum took note of various codes of practice and guidelines issued by other jurisdictions as a basis for their consultation paper and the contents of the report that follows, particularly the following –

- Isle of Man 'Code of Practice on the Recognition of Trade Unions' (2001)
- Northern Ireland advisory guide on 'Collective Dispute Resolution (Nov 1999)
- U.K. Department of Trade and Industry Guide to 'Industrial Action and the Law' (PL870, Feb 2004)
- U.K. code of practice on 'Picketing' (PL928)
- The U.K.'s Central Arbitration Committee guidance booklet on 'Trade Union Recognition and Derecognition'.

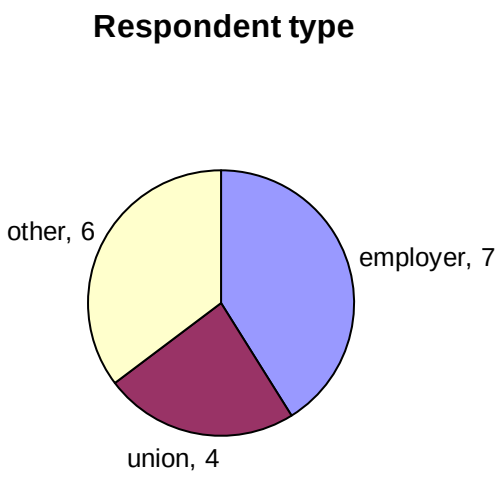
Section 4 – The Consultation process and responses

The Forum issued a consultation paper on the codes of practice simultaneously with the release of the Committee's consultation on the draft Employment Relations Law itself. As stated in the introduction to this report, this resulted in issues that had not previously been experienced by the Forum.

The Forum is aware that due to recent amendments to the codes of practice provisions in the draft Law requiring them to be made by Order, codes will be subject to an additional consultation period following their placement in the Gazette, inviting the submission of comments to the Committee. The Forum wishes the Committee to note that it would appreciate the opportunity to comment further on the draft codes at that stage, after further consultation has been undertaken with the public and with JACS.

The questionnaire consisted of some straightforward questions, requiring a tick box answer, and others that sought more general views on suggested procedures.

A total of 17 responses were received, from the following respondent types –



The category 'other' includes individual employees, independent bodies, such as JACS and those who did not indicate their respondent type.

Although there was agreement amongst respondents on some of the fundamental issues, on the more controversial matters, responses tended to be polarized, with employers and unions providing the extremes of view.

The following sub-sections indicate, where possible, the number and split of respondents for each question, and the level of agreement for suggested procedures. The Forum has also sifted the additional comments and has included in this report those that appear useful and relevant.

The consultation responses are detailed in each of the following sections –

Code 1 – Recognition of trade unions

Code 2 – Resolving Collective disputes

Code 3 – Balloting for industrial action

Code 4 – Limitations on industrial action

Code 1 – Recognition of trade unions

The process of seeking recognition

The following list of matters was suggested as important for the parties to consider when recognition is sought and respondents were asked to comment on each point and provide any further suggestions –

1. enter into voluntary resolution of issues;
2. respect the independence of the other;
3. be prepared to consult;
4. be prepared to negotiate in good faith about trade union recognition;
5. listen to, take account of, and respond to the other's case.

Most respondents of all types agreed with all those listed, and the following additional matter was suggested for inclusion –

6. maintain adequate records to show that the above processes have been undertaken.

Collective bargaining

It was suggested that the code might provide the following list of matters to consider for negotiation and inclusion in an agreement on recognition –

(a) The names of the parties.
(b) Definition of the bargaining unit.
(c) Statement of intent.
(d) The procedure in the event of a dispute over the interpretation of an agreement.
(e) Procedure for negotiation and constitution of the negotiating committee.
(f) Issues that may or may not be negotiated.
(g) The procedure in the event of failure to agree, following negotiations.
(h) The role of trade union representatives.
(i) The election of trade union representatives.
(j) The number and constituencies of trade union representatives.
(k) Time off for the trade union representatives.
(l) Training of trade union representatives.
(m) Facilities for the trade union.
(n) Deduction of trade union subscriptions from member's pay.
(o) Meetings of employees during working time.
(p) The procedure for calling a special meeting of the bargaining unit.
(q) Forums for consultation.
(r) Health and safety issues.
(s) Notice to terminate the agreement.

A number of respondents did not agree that 'health and safety' should be included in the list, however the Forum suggested that it could be included as collective agreements often include the unions requirement for a safety representative and consultation with staff on health and safety issues. The following additional matters were suggested for inclusion in the list –

(t) Agreement on the disclosure of information (by either party) for collective bargaining purposes.
(u) An understanding that membership of the union is a matter of individual choice.

Based on the responses received, it should be made very clear in the code that the list of matters is suggestive, rather than prescriptive or exhaustive, i.e. that a collective agreement does not have to cover all of the above and may cover matters that are not listed.

The bargaining unit

In determining the appropriate bargaining unit, the Forum suggested that the parties should take account of the following points, asking respondents to indicate if they agreed, and to provide any other suggestions –

1. Its being compatible with effective management.
2. Each other's views.
3. Any current local, bargaining arrangement.
4. The desirability of avoiding small, fragmented bargaining units within an undertaking.
5. The characteristics of the employees falling within the proposed bargaining unit and of any other employees of the employer (including the need to avoid conflicts of interests between members).
6. The location of the employees and the true structure of the organisation.

Most of the respondents agreed with all the issues in the list, and the following additional point were suggested for inclusion –

7. The wishes of the employees who are seeking to be represented by the trade union.

Although the Forum did not consult on whether there should be a minimum number of employees an employer should have before recognition should have to be considered, two respondents suggested that there should be such a minimum. The U.K. has established formal procedures for recognition processes, which do not need to be applied where the employer employs fewer than 21 workers. The Forum did not reach a view on the inclusion of this matter in the code of practice, however the fact that recognition is a voluntary process in Jersey and that 80% of the Island's employers employ less than 10 employees should be a major consideration, as this would significantly affect the application of the suggested procedure.

On the question of the factors that should be considered in deciding what constitutes the bargaining unit for employers with employees working on more than one site, there was a broad consensus among all types of respondents that the main factors should be similarity of work and terms and conditions of employment.

In the following three questions, the views of employer and union respondents were polarised, however those respondents categorised as 'other' (i.e. not employers or employees as such) could be considered more independent in their view, and their responses provided a useful middle ground that the Forum used as a basis for reaching a consensus on the percentages to be proposed.

- The Forum asked what the minimum percentage of employees in membership in respect of the bargaining unit should be in order that it would be considered reasonable for the employer to recognise the union. Based on the middle ground responses, the Forum proposes 50%+1. The aim should be to obtain a clear majority.
- The Forum also proposes that, if a union cannot demonstrate that it has 50%+1 of employees in membership in respect of the bargaining unit concerned, or if the employer does not accept the union's estimate of membership, the unions should be able to demonstrate that at least 35% of the proposed bargaining unit are in membership of the applicant union (or would be willing to take up membership if recognition was granted), in order for a ballot of employees in the bargaining unit to be held.
- The Forum proposes that, if employees in the bargaining unit are balloted as to whether they are in favour of the union being granted recognition, 50%+1 of those entitled to vote should actually be voting and, of those voting, a minimum of 50%+1 of employees should vote in favour.

The process of seeking trade union recognition

The Forum's suggested a procedure detailing the required steps for both parties where a trade union seeks recognition by their employer, which was agreed by most respondents and the following table includes those changes that were suggested by respondents.

	Seek informal talks with the employer with the aim of agreement in principle to recognise the union.	
Informal talks take place between the employer and the union.		The employer declines to participate in informal talks with the union
	The union should write to the employer requesting recognition for the purposes of collective bargaining, including the following information; • identify the union • confirm it is listed with the registrar • the group/s, of employees on whose behalf recognition is sought • the number of those who are members of the union, or who would be willing to take up membership were recognition to be granted • the extent of recognition sought.	
	It would be considered reasonable for the employer to respond in writing to a request for recognition within 20 working days	If employer does not respond within 20 days, the union could consider approaching JACS
Employer confirms his agreement to recognise the union on different terms (e.g. the composition of the bargaining unit)	Employer confirms agreement to the request on the terms proposed	Employer confirms rejection of the request, giving reasons
The parties negotiate with a view to reaching agreement.		The union should consider approaching JACS.
If the parties cannot reach agreement, JACS could be approached by either party.	If the employer agrees to the request, the parties should conclude a written agreement on recognition	
	Where a ballot is appropriate, the union should write to the employer to request a ballot, and to seek a meeting. The employer should respond within 10 working days.	

	Within a further 10 working days, both parties should meet to discuss and conclude arrangements for the ballot and for the union's representative to have access to the employees.	
↓	The ballot should take place 10 working days after arrangements for the ballot and for the union's representatives to have access to the employees have been finalised.	

Derecognition

The Forum asked whether derecognition should only occur at the request of at least a certain percentage of employees. The responses were 1 employer, 4 unions and 1 'other' agreed with the statements, and 6 employers and 4 'others' did not agree.

The Forum considered that the main factor in considering when it would be fair to be derecognised is when the union is no longer representative of employees. Although all union respondents were in favour of the statement, the Forum suggests that the employees, union or employer should be able to request derecognition and a procedure should be followed.

In considering when it might be reasonable to derecognise a union, a similar mechanism to that adopted for recognition should be applied and the following procedure would be reasonable –

1. Where an employer (whether or not at the request of a minimum percentage of his employees) seeks to derecognise a union, then, in cases where recognition was awarded on the basis of union membership and a period of at least three years has elapsed since recognition was awarded, and it can be demonstrated conclusively that fewer than 50% of employees in respect of the bargaining unit concerned are in membership of the union, it is reasonable that the union be derecognised.
2. Where the union does not accept the employer's estimate of membership in respect of the bargaining unit concerned or, where an employer (whether or not at the request of at least 10% of his employees) seeks to derecognise a union in circumstances other than those set out above, then, provided that a period of at least three years has elapsed since recognition was awarded, a ballot of employees in the bargaining unit should be held.
3. If a ballot of employees in the bargaining unit confirms that 50%+1 of those employees voting and 50%+1 of those entitled to vote, are in favour of the union being derecognised, it is reasonable that the employer should derecognise the union.
4. It is suggested that both parties should seek to agree new arrangements and if agreement is not reached, JACS may be invited to assist.

Changing a recognition agreement

The majority of respondents agreed that both employers and employees should agree on the changing of a recognition agreement and that the same mechanism should be used as for the initial setting up of collective agreements, with JACS assistance.

Re-applying for recognition or derecognition

The Forum suggested that, where a ballot of employees on recognition or derecognition has taken place, it would not be reasonable for a further request for recognition, or derecognition, to be submitted by the same union or the

employer, in respect of the same, or a substantially similar, bargaining unit, expect where there have been significant changes in the original circumstances of the case. A question was asked as to whether there should be such a time period limiting the submission of such applications, and if so what it should be.

Responses were, 6 employers, 1 union and 5 'others' said there should be a time period; 1 employer, 3 unions and 1 'other' said that there should not be such a period. The Forum suggests, based on the views received, that the following periods should apply –

- For recognition, an application should not be submitted before a period of at least one year has elapsed since derecognition occurred (to be equal with the procedure for recognition)
- For derecognition, an application should not be submitted before a period of at least three years has elapsed since recognition was awarded.

Disputes about recognition or derecognition

The Forum's consultation paper suggested that, where possible, disputes between an employer and a trade union about recognition or derecognition should be resolved voluntarily by the parties. If this proves unsuccessful, or if no procedures exists for resolving disputes, the matter should be referred to JACS, which may make recommendations to either or both of the parties. No additional comments were received for consideration on this issue.

Inter-union issues

The Forum suggested a procedure to be adopted for circumstances where there are inter-union issues, which was accepted by most respondents of all types, as shown on the following page.

The Forum asked if the codes should recognise and provide mechanisms for dealing with circumstances where there is an existing union and a group of members wants to transfer to a new incoming union. Responses were – 7 employers, 2 unions and 6 others agreed that such a mechanism should be provided, and 2 unions did not agree.

1. If two or more unions wish to make a joint request for recognition in respect of the same group of employees, the unions should act jointly in preparing and submitting their request. They should confirm that they will co-operate with each other in a manner that is likely to secure and maintain stable and effective bargaining arrangements. If the employer wishes, the unions should enter into arrangements that provide for collective bargaining to be conducted by their working in unions as a single team at a single table.
2. Except in those circumstances set out below, no union should commence organising activities in respect of any bargaining unit where another union has the majority of employees in membership and/or is recognised to negotiate terms and conditions, unless responding to an employer initiative, which would have the effect of, directly or indirectly, undermining the position of the established union.
3. Where a union considers that another union has low levels of membership, and no agreement or a redundant agreement, within any organisation in respect of any group of employees, the union should consult with the other union, before commencing organising activities (or as soon as it is informed of the interests of the other union).
4. A dispute between trade unions about recognition should be resolved by the unions themselves using procedures that have the confidence of the parties to the dispute.
5. In circumstances when there is an existing union and a group of members want to transfer membership to a new incoming union, the two unions should use JACS to assist and mediate. Reference should be made to the recognition and derecognition procedures in the code of practice, particularly to look at the percentage of employees who would join the incoming union.

Code 2 – Resolving Collective Disputes

Dispute resolution procedures

The Forum suggested that, in accordance with the framework provided by the draft Employment Relations Law, the dispute resolution procedure on the following page should be adopted.

All respondent types agreed with the suggested procedure, however one of the unions noted that they did not agree with the possibility of binding arbitration by the Tribunal, which was the final stage in the suggested procedure, in the consultation paper, based on the content of the draft Law at that time. It should be noted that the draft Law (and the procedure outlined on the following page) now provides that the Employment Tribunal's jurisdiction is more limited, in that it may make a declaration in a collective employment dispute, however that declaration will not itself be enforceable in a court. If the declaration incorporates any term or condition in an individual contract of employment, that term or condition may be enforced in a court, in the usual way, by a party to the contract.

The Forum agreed that the code of practice should emphasize that JACS should be used as much as possible in the process and that consideration should be given to the inclusion of time limits on the dispute resolution procedure.

Some respondents indicated agreement that the Tribunal could provide binding arbitration, but that reference to the Tribunal and the outcome should not preclude industrial action. The Forum would emphasize the importance of providing clarity in the code as to what is to be considered "reasonable" and "unreasonable" behaviour (and the affect of this on the taking of industrial action and immunities) and also the importance of ensuring the procedure fits within the provisions of the final draft of the Employment Relations Law.

‘Negotiations’ (and discussions) must take place in accordance with rules, such as a collective bargaining agreement, ‘in good faith’

Settle

Where negotiations break down without a settlement having been reached, either (or both) parties may seek/request assistance to reach agreement from JACS (or another source of independent assistance)

Settle – if agreement is reached, JACS produce a binding settlement document signed by both parties

If JACS can’t help the parties to settle, they can offer a voluntary, independent conciliation/mediation process to try to help parties reach a settlement through discussions and negotiation

Settle – if agreement is reached, a binding settlement document is produced and signed by both parties

If no agreement is reached, JACS may offer to arrange independent binding arbitration (both parties need to agree it and share the costs). Or, the 2 parties may arrange independent arbitration without JACS assistance.

Settle - if agreement is reached, a binding settlement document is produced and signed by both parties

f all avenues have not been xhausted, the Clerk or Tribunal Chair person may lirect the parties to do so.

If all avenues for a negotiated settlement have been exhausted ‘in good faith’ (except arbitration), reference may be made to the Employment Tribunal

If both parties decide not to seek arbitration or go to a Tribunal and a negotiated settlement has not been achieved, but the Union or Association decides to take action, then this should be in accordance with the Code of Practice.

A reference may be made by both parties to an Employment Tribunal to avoid the dispute escalating to industrial action.

One party may refer a dispute ONLY if the other is being ‘unreasonable’ AND all other mechanisms for resolution have been exhausted.

Tribunal to make a declaration.

If the declaration incorporates any term or condition in an individual contract of employment, that may be enforced in Court by a party to that contract.

Code 3 – Conduct of ballots

Balloting on industrial action

The Forum asked if a ballot should have to take place before industrial action is taken. All employer respondents agreed that it should, as did two of the three union responses. It was pointed out by one respondent that most unions already specify balloting requirement in their rule books. The Forum therefore suggests that the code should not be overly prescriptive and only provide basic principles and minimum standards, so that they do not conflict with provisions in unions own rule books.

It is suggested that where a ballot is to be held, both parties should co-operate and behave reasonably and responsibly in connection with the ballot and access to the employees. The Forum suggested that certain requirements should be satisfied in relation to balloting to be considered 'reasonable', which have been amended in line with the responses received, as follows –

1. The ballot should be conducted by an appropriate independent person (including the suggestion that the name of the ballot scrutineer should be specified). JACS can assist in this process.
2. The ballot should be held in secret.
3. The ballot should be held in the workplace, by post, or a combination of the two, (and it should be clarified that the method used will depend on the circumstances).
4. The ballot should be funded by the union, unless otherwise agreed with the employer (This replaced the Forum's suggestion that the cost should be shared equally by employer and union, as responses indicated that this would not be the typical practice).
5. The ballot should only ask questions that require a 'yes' or 'no' answer (however more than one question may be asked on a ballot paper, rather than the "one question only" proposal of the Forum's)
6. Ballot papers should be retained for at least one month (and it was suggested that the code should specify that after one month, papers are destroyed).
7. Notice should be given of such information in the union's possession to help the employer make plans to enable him to warn his customers of the possibility of disruption so that they can make alternative arrangements or to take steps to ensure the health and safety of his employees, or the public, or to safeguard equipment which might otherwise suffer damage from being shut down or left without supervision e.g., the number, category or workplace of the employees concerned (not necessarily by individual name).

On the point 7 above, all employer respondents agreed with its' inclusion and all union respondents disagreed. In the U.K., notice of official action must be provided to the employer, including what groups are to take part in industrial action and what they will be doing. The Forum suggests that it would be reasonable to expect an employer to be provided with enough information to work out how the business will be affected and the requirement has therefore been left in the list.

A procedure for balloting was included in the Forum's consultation and the procedure below incorporates some of the suggestions made by respondents –

An access agreement, preferably in written form, should be established. It should be agreed who should have access to the employees constituting the bargaining unit, and where, when, for how long and in what form this access is to be provided. The arrangements should reflect local circumstances.
Approaches to employees from the employer and union should be balanced and fair. Where they are suitable for the purpose, the employer's typical methods of communicating with his workforce should be used as a benchmark for determining how the union should communicate with members of the same workforce during the access period.
Where practicable, the employer should allow the union to hold a minimum of one meeting of at least 30 minutes in duration for every 10 working days of the access period, or part thereof,

which all workers or a substantial proportion of them are given the opportunity to attend. This provision was considered by some respondents to be too prescriptive and also that a meeting of 30 minutes was not sufficient. The Forum considered the responses and emphasises that the 30 minutes provision is a<u>minimum</u>, and that if a longer meeting was required, it would be arranged to overlap the beginning or end of the day, running into the employees own time.
Where practicable, employers should provide a notice board for the union to display written material at the place of work. The notice board should be in a prominent location in the workplace and the union should be able to display material, including references to off-site meetings, without interference from the employer.
The union should ensure that disruption to the business of the employer is minimised. Consideration should be given to arranging meetings of employees at the bargaining unit during rest periods or towards the beginning or end of the working day/shift.
The employer should not be expected to pay the employees if they are present at the workplace for the purposes of access when they would not otherwise have been at work nor receiving pay from the employer.

The Forum noted that this part of the code should clearly reflect what is to be regarded as industrial action, e.g. to include “strike” and “lock out” as defined in the Employment (Jersey) Law 2003.

Code 4 – Limitations on Industrial Action

Essential services

The Forum asked how provisions should differ for employees in 'essential services' and what should be regarded as an 'essential service', as these matters had not been settled from the results of the 2001 'Trade Union Issues' consultation. Most respondents did not agree that that an 'essential service' should be defined as widely as had been suggested by respondents to the 2001 consultation.

One union provided a strict definition of the term based on International Labour Organisation principles, which includes only those services "whose interruption would endanger the life, personal safety or health of the whole or part of the population."

If the policy intent is for 'essential services' to be prevented from taking industrial action, the code of practice would not be adequate to allow this and provision would have to be made in the Law. The Forum suggests that strikes in essential services should not be restricted via the Law, but the code of practice should include the suggested ILO definition of the term and that any special provisions should be dealt with by negotiation and agreement with the trade unions involved and should be included in a 'relevant agreement' (i.e. a collective or individual agreement, as defined in the Employment Law)

Secondary Action

The Forum asked if in any of the following circumstances it should be specified as inappropriate to take industrial action –

1. Where action is taken in support of a 3rd party.
2. Where employees are not directly involved.
3. Where the dispute is not with the same employer.
4. Where the employees are not at the same place of work of those directly affected.

Employer respondents supported most of the statements, as did the union respondents, with the exception of one union respondent who did not agree with any of the four statements.

The Forum considered the comments received in more detail and it is suggested that the inclusion of the following statement would be a suitable substitute, as it adequately covers the meaning of those other four statements and is already used by a large local employer as a definition of secondary action.

- Where the employees are not a party to the dispute

The Forum also noted that the code should be clear as to whether action contrary to that statement is to be considered as "unreasonable" for the purpose of immunity from liability.

Picketing

The Forum asked how prescriptive the code should be with regard to picketing and suggested a list of possible details to consider for inclusion –

- The number of pickets in a line.
- At own place of work only.
- Notice to be given before taking action.
- Reasonable information to give to the employer, e.g. length of action and who is taking action.
- What parts of the organisation will be affected and for how long.
- Consultation periods.

Based on the responses received, the Forum considered including the provision that it would be considered unreasonable to have more than six pickets in a line at one time and that picketing should only take place at the employees own place of work.

However, one union response suggested that rather than providing such a prescriptive list of matters, the most important issues for consideration are the pickets' purpose and actions, the conduct that it would be reasonable for the pickets to undertake (e.g. are the pickets present peacefully to demonstrate or persuade, rather than intimidate, obstruct, or commit an offence?) and it was suggested that the inclusion of a definition of 'peaceful action' would be appropriate.

Additional matters for inclusion in codes of practice

Based on the responses received, the Forum considered if there were any additional matters that should be included in codes of practice. One suggestion was that the code should detail reasonable treatment of staff, including procedures dealing with the victimisation of employees on the basis of union membership or non-membership.

Explanatory Note

This draft Law has the following effects –

(a) It provides for the registration of trade unions and employers' associations.

A union or association is entitled to be registered if it applies for registration in accordance with this draft Law, its purposes are lawful and its name is not so similar to that of any other union or association as to be misleading.

A union or association may not do anything in furtherance of the purposes for which it is formed unless it is registered. However, a registered union or association may pursue any lawful purpose.

(b) It confers or imposes on trade unions and employers' associations, and on officials and members of those bodies, legal characteristics, rights and obligations that they do not otherwise have in Jersey law.

A trade union may be constituted as a body corporate, if so desired. However, it may not be incorporated under the Companies (Jersey) Law 1991 as a limited company.

If a union or association is unincorporated, it may make contracts. If registered, it may sue in its own name. In any event, it may be sued and prosecuted in its own name.

The purposes of a trade union or employers' association and its rules will not be unlawful by reason only that they are in restraint of trade.

The draft Law also grants immunities from civil legal liabilities that might otherwise arise in consequence of industrial action. However, these immunities are not absolute. They do not apply to unregistered unions or associations, or to their officials.

If the Employment and Social Security Committee by Order approves a code of practice that provides for a ballot before industrial action is taken, or defines what is or is not reasonable industrial action, neither a union nor an association (nor its officials) will have immunity under the draft Law against the civil legal consequences of action that is contrary to the code of practice.

(c) The property of an unincorporated trade union or employers' association must be vested in trustees, and will be available to satisfy any judgment or order made against the union or association. This requirement does not apply if the union or association is constituted as a fidéicommis or is a trust recognized under the Trusts (Jersey) Law 1984.

(d) The draft Law enables the Jersey Employment Tribunal to deal with collective employment disputes in 2 circumstances.

One is where all the parties involved in the dispute consent to its doing so.

The other is where all other available procedures (such as procedures set out in collective agreements or codes of practice) have been applied unsuccessfully, and one of the parties is acting unreasonably in the way in which that party is or is not complying with an available procedure.

A "collective employment dispute" means a dispute between an employer and employees, where the latter are represented by a trade union, and there is a collective agreement between the employer and the union, and the dispute relates wholly or mainly to one or more of a number of specified topics. These can be described broadly as differences concerning terms of employment, the conditions in which employees are required to work and the rights or duties of the employer or employees.

The Employment Tribunal may make any order by consent of all of the parties to the dispute.

It may in any case make a declaration as to any of the following matters –

(i) whether a party to the dispute is observing terms or conditions of employment;

(ii) the interpretation of a collective agreement; or

(iii) the incorporation of terms or conditions of employment into the individual contracts of employment of the employees concerned.

The Tribunal's declaration in a collective employment dispute will not itself be enforceable in a court. However, if the declaration incorporates any term or condition in an individual contract of employment, that term or condition may be enforced in a court, in the usual way, by a party to the contract.

The Tribunal may in its discretion adjourn the proceedings, in an appropriate case, to encourage settlement.

The draft Law is set out in the following way –

PART 1

INTRODUCTION

Article 1 defines various words that are used in the draft Law.

Articles 2 to 5 also define expressions used in the draft Law.

Thus *Article 2* explains "employer" and "employee"; *Article 3* defines "trade union"; *Article 4* explains the meaning of "employers' association"; and *Article 5* explains what is meant by a "collective employment dispute".

Article 6 provides for the forms in which applications may be made under the draft Law.

PART 2

REGISTRATION OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Article 7 prohibits a trade union or employers' association from doing anything in furtherance of its purposes unless it is registered under the draft Law.

Article 8 provides for the appointment of a registrar of trade unions and employers' associations, and requires him or her to maintain registers of unions and associations. The registers are to be available for public inspection.

Article 9 provides for applications for registration.

Article 10 provides for the determination of applications by the registrar. An application may only be refused if any purpose of the trade union or employers' association is unlawful, or the application is not made in accordance with the draft Law, or the name is misleading.

Article 11 provides for applications for the amendment of the registers.

Article 12 provides for the determination of such applications.

Article 13 provides for the cancellation of the registration of a trade union or employers' association on its own application.

Article 14 provides for the cancellation of registration on other grounds.

Article 15 provides for appeals to the Royal Court against decisions by the registrar.

There will be rights of appeal against the refusal of registration; the refusal of an application to amend the register or to cancel registration at the request of the union or association concerned; the cancellation of registration at the request of some other person or on the motion of the registrar; and the refusal of an application by someone other than the union or association to cancel its registration.

PART 3

STATUS OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Article 16 does not prevent a trade union or an employers' association from being a body corporate if it chooses to constitute itself in that way. However, a union may not be incorporated under the Companies (Jersey) Law 1991 as a limited company.

The Article also provides that an unincorporated trade union or employers' association is capable of making contracts, and of bringing and defending legal proceedings in its own name. However, a union or association that is neither incorporated nor registered under the draft Law will not have the capacity to sue in its own name.

Article 16 also provides that the property of an unincorporated trade union or employers' association is to be vested in trustees; that if an unincorporated union or association is alleged to have committed an offence, it may be prosecuted in its own name; and that judgments against unions or associations are enforceable against the property held in trust for them.

Nothing in Article 16 applies to a fidéicommis.

Article 17 protects members of trade unions and employers' associations from criminal liability or contractual liability that would otherwise arise by reason of their purposes being in restraint of trade. It also provides that their rules are not unlawful or unenforceable by reason only that they are in restraint of trade.

Article 18 abolishes an employee's liability to pay compensation for a breach of his or her contract of employment by refusing to work as required, if the employee's action relates to an employment dispute. It does not affect any other remedy that the employer may have against the employee.

Article 19 grants immunities from liability in tort, and from criminal liability, in respect of industrial action.

A "tort" is a civil wrong – for example, intimidation, interference with business, inducing breach of contract – as distinct from a criminal offence.

The immunities that are granted against liability in tort relate to acts that induce the breaking of contracts or threatened breaches of or interference with contracts.

They also relate to things done by 2 or more persons acting in agreement or combination, where such conduct would not be tortious if it were that of a person acting alone.

The immunity that is granted against criminal liability is in respect of any act done by 2 or more persons in agreement or combination, where such an act would not be a criminal offence if done by a person acting alone.

Article 19 must be read subject to *Article 20*, which limits immunity in particular cases.

Article 20 provides that Article 19 does not protect unregistered trade unions or unregistered employers' associations, or their officials.

It also provides that if an approved code of practice provides that industrial action must be sanctioned by a ballot of members, and the action is not taken in accordance with such a ballot, Article 19 does not prevent the trade union from being liable in tort.

It also provides that Article 19 does not prevent person from being liable in tort for action that is defined in an approved code of practice as conduct that is not reasonable when taken in respect of an employment dispute.

Article 21 limits a registered trade union's liability to pay compensation for a tort to £10,000 or to such other amount as the States may prescribe by Regulations.

This limitation does not apply to liability for personal injury arising from negligence, nuisance or breach of duty, or liability for breach of duty relating to property.

PART 4

RESOLUTION OF COLLECTIVE EMPLOYMENT DISPUTES

Article 22 gives the Employment Tribunal its jurisdiction (described in paragraph (d) of the introduction to this Explanatory Note) to resolve collective employment disputes.

Article 23 enables the Tribunal to make a declaration in respect of such a dispute. The declaration may relate to whether or not a party is observing relevant terms and conditions of employment, the interpretation of a relevant collective agreement or the incorporation of relevant terms and conditions into individual contracts of employment.

Article 24 provides that where the Tribunal has made a declaration that a relevant term or condition is to be incorporated into individual contracts of employment, it shall become part of those contracts until subsequently varied or replaced by agreement, negotiation or a further declaration.

PART 5

OTHER PROVISIONS

Article 25 enables the Employment and Social Security Committee, by Order, to approve codes of practice relating to employment relations.

In particular, codes of practice may deal with the recognition of trade unions, ballots, conduct that is or is not reasonable in employment disputes, and recommended procedures for the resolution of such disputes. However, this does not limit the generality of the power to approve codes of practice.

Before approving a code, the Committee must publish a notice inviting interested persons to inspect the proposed code and make representations. It must also consult the following persons and bodies –

(a) the Jersey Advisory and Conciliation Service, and the Employment Forum;

(b) the Policy and Resources Committee, in respect of international agreements and international obligations that apply to Jersey; and

(c) any other persons who will, in the view of the Committee, be affected.

In deciding whether or not to proceed to approve the code of practice, the Committee must consider all representations received.

The approved code of practice cannot come into force sooner than 28 days after the Order is laid before the States, which may annul it under the Subordinate Legislation (Jersey) Order 1960.

These new provisions will replace those at present contained in the Jersey Advisory and Conciliation (Jersey) Law 2003 ("the JACS Law 2003").

Article 26 sets out in this draft Law provisions that are now contained in the JACS Law 2003, under which approved codes of practice are admissible in evidence and, where relevant, must be taken into account in determining a question before a court or the Employment Tribunal.

A failure to observe an approved code of practice does not in itself make a person liable to any proceedings. However, this is subject to Article 20(2) of this draft Law. (That Article provides that, where an approved code defines conduct as unreasonable in an employment dispute, a person will not be protected under Article 19 of this draft Law from liability in tort for such conduct).

Article 27 enables the States, in their discretion, to make Regulations for the purposes of this draft Law.

These may include provision for the following matters –

(a) information to be provided for registration, and application and registration forms;

(b) application fees;

(c) accounting procedures for trade unions and employers' associations;

(d) returns of information by unions and associations to the registrar, and the provision of information to their members.

Article 28 amends other enactments. The details of these amendments are contained in the Schedule to this draft Law. Their effect, which is not in every case consequential upon or connected with the enactment of this draft Law, is explained below.

Article 29 specifies how this draft Law may be cited.

It also provides that it will come into force on a day to be appointed by the States, by Act.

The *Schedule* contains the following amendments to other enactments –

The JACS Law 2003:

All of the amendments to the JACS Law 2003 are connected with this draft Law. They are –

(a) The definitions in the JACS Law 2003 relating to the concept of employment are altered to accord with those in this draft Law. This is done by repealing the existing definition "employment" in Article 1(1) of the JACS Law 2003, and inserting new definitions "employer" and "employee" in a new Article 1A in the JACS Law 2003.

(b) Definitions of the expressions "collective employment dispute" and "individual employment dispute" are included in Article 1 of the JACS Law 2003.

The first is the same as the definition of a collective employment dispute in this draft Law.

An "individual employment dispute" will mean any other kind of employment dispute. The expression "employment dispute" is itself widened to include a dispute as to the entering into or failure to enter into a contract of employment.

(c) Articles 9, 10 and 11 of the JACS Law 2003, relating to codes of practice for better employment relations, are repealed. These are now provided for in this draft Law.

Employment (Jersey) Law 2003 ("the Employment Law 2003"):

The following amendments are connected with the present draft Law –

(a) The definitions relating to employment in the Employment Law 2003 are altered to accord with those in this draft Law and the JACS Law 2003. This has been done by repealing the existing definition "employ" in Article 1(1) of the Employment Law 2003, and inserting new definitions "employer" and "employee" in a new Article 1A in the Employment Law 2003.

(b) The definition "trade union" in Article 1(1) of the Employment Law 2003 is repealed, and new definitions of "trade union" and "employers' association", corresponding with those in the present draft Law, are inserted as new Articles 1B and 1C in the Employment Law 2003.

(c) The existing definition "collective agreement" in Article 1(1) of the Employment Law 2003 is widened to include an agreement between a single employer and employees. This will then be in the same terms as the definition in this draft Law.

(d) Definitions of the expressions "collective employment dispute" and "individual employment dispute" are included in Article 1 of the Employment Law to correspond with the definitions in this present draft Law.

The definition "employment dispute" in Article 1(1) of the Employment Law 2003 is widened in the same way as that in the JACS Law 2003 – i.e. so as to include a dispute as to the entering into or failure to enter into a contract of employment.

(e) Article 65 of the Employment Law 2003 is widened to provide that the dismissal of an employee is unfair if a principal reason for it is that the employee had taken part or proposed to take part in industrial action that is not specified in a code of practice approved under this draft Law as unreasonable conduct.

(f) In consequence of the introduction by this present draft Law of a resolution procedure for collective disputes, Articles 86 and 88 of the Employment Law 2003 are revised to apply only to employment disputes that do not fall within that category.

(g) Article 81 of the Employment Law 2003 is amended to provide explicitly that the procedural provisions in Part 9 of that Law apply to the Employment Tribunal when it is exercising its jurisdiction in relation to a collective employment dispute under this draft Law. (The amendment is merely declaratory of the present effect of those provisions.)

The amendments to the Employment Law 2003 that are unrelated to the other purposes of this draft Law are as follows –

(a) New Articles 2A and 2B are inserted in the Employment Law 2003. These enable the Employment and Social Security Committee to approve codes of practice for the purposes of the Employment Law 2003 Law, in the same way as it may approve codes of practice under Article 19 of this draft Law for the purposes of this draft Law. A code of practice approved under the Employment Law 2003 will have the same evidentiary standing as one approved under this draft Law.

(b) Article 10 of the Employment Law 2003, which relates to weekly rest periods, at present provides that an employer and an employee may agree to provide for such periods on the fortnightly basis to which paragraph (2) of that Article refers instead of the weekly basis stipulated in paragraph (1) of the Article. This draft Law amends this provision so that the option will only apply if it is contained in a collective agreement that forms part of the employee's contract with the employer or in some other agreement that is legally enforceable as between them.

Article 10 of the Employment Law 2003 is also amended to enable the States to make Regulations specifying circumstances in which an employee will not be entitled to a rest period.

(c) The opportunity is taken to provide that no award by the Tribunal under the Employment Law 2003 (for example, in relation to an individual contract of employment) shall have the effect of compelling a person to work. It is unnecessary to include a similar provision in this present draft Law in respect of the Tribunal's jurisdiction in collective employment disputes. Under this draft Law, it may only make a declaration, which is in itself unenforceable. Any determination in such a dispute of an employee's obligations would only be enforceable if those obligations were declared to be incorporated into his or her individual contract of employment. In that event, it would become enforceable (to the extent that it did not require the employee to work) under the Employment Law 2003 itself.

(d) Article 61 of the Employment Law 2003 gives an employer the right not to be dismissed unfairly. Under Article 73, this right does not arise until the employee has been engaged continuously for at least 26 weeks (or such other period as may be prescribed).

The effect of the amendments in paragraph 2(6)(a) of the Schedule to this draft Law is to

provide that the time limit will not apply when the employee is dismissed for reasons related to his or her membership of or activities in a trade union, or to his or her redundancy.

(e) Article 73 of the Employment Law 2003 also provides that where an employee is engaged or contract for a fixed term of 26 weeks (or such other term as may be prescribed), or less, the right to protection under Article 61 against unfair dismissal does not arise unless he or she has served at least two-thirds of the term.

The effect of the amendment in paragraph 2(6)(b) of the Schedule to this draft Law is to require in addition that, to become entitled to such protection, the employee must in any case have served at least 13 weeks of the fixed term.

(f) Under Article 74, the right to protection under Article 61 against unfair dismissal does nc apply if the employee has reached retiring age.

The effect of the amendment in paragraph 2(7)) of the Schedule to this draft Law is to provide that this limitation of that protection will not apply when the employee is dismissed for reasons related to his or her membership of or activities in a trade union, or to his or her redundancy.

Jersey

DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200-

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Jersey

DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200-

A LAW to provide for the registration of trade unions and employers' associations; to make provision as to the legal status, including the obligations and immunities, of trade unions and employers' associations, and their officials and members; to provide for the resolution of collective employment disputes between employers and employees so as to promote the development of good working relationships between them; and for related purposes.

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 –

PART 1

INTRODUCTION

1 Interpretation

In this Law, unless the context otherwise requires –

"approved code of practice" means a code of practice that is approved by an Order made by the Employment and Social Security Committee in accordance with Article 25;

"collective agreement" means an agreement that has been settled by machinery of negotiation, mediation, conciliation or arbitration to which the parties are –

(a) an employer, or an organization of employers that is representative of a substantial proportion of the employers engaged in the trade or industry concerned; and

(b) employees who are representative of a substantial proportion of the employees engaged in the trade or industry concerned;

"Committee" means the Employment and Social Security Committee;

"constitution" means the rules constituting a trade union or employers' association and providing for its management, however those rules are described;

"employment dispute" means –

(a) a collective employment dispute; or

(b) an individual employment dispute as defined in Article 1(1) of the Employment (Jersey) Law 2003[1]

"Employment Forum" has the same meaning as it has in the Employment (Jersey) Law 2003[2]

"Jersey Employment Tribunal" and "Tribunal" mean the Jersey Employment Tribunal established by Article 81 of theEmployment (Jersey) Law 2003[3]

"prescribed" means prescribed by Regulations;

"register", when used as a noun, means the register of trade unions or the register of employers' associations (as the case requires) established and maintained under Article 8(2) by the registrar;

"register" when used as a verb, means to register under Article 10(3);

"registrar" means the registrar of trade unions and employers' associations appointed under Article 8(1);

"Regulations" mean Regulations made under this Law.

2 "Employer" and "employee"

(1) In this Law –

(a) "employer" means a person who employs another person; and

(b) "employee" means a person who is employed by an employer.

(2) For the purposes of paragraph (1), a person is employed by another person if the first person works for the second person under a contract of service or apprenticeship with the second person.

(3) For the purposes of paragraph (1), a person is also employed by another person if the first person enters into any other contract with the second person under which –

(a) the first person undertakes to do, or to perform personally, work or services for the second person; and

(b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person.

(4) It is immaterial whether a contract to which paragraph (2) or paragraph (3) refers is express or implied.

(5) If the contract is express, it is immaterial whether it is oral or in writing.

3 "Trade union"

(1) In this Law, "trade union" means an organization that is described in paragraph (2) or in paragraph (3).

(2) An organization is a trade union if –

(a) it consists wholly or mainly of employees of one or more descriptions; and

(b) its principal purposes include the regulation of relations between employees of that description or of those descriptions and employers or employers' associations.

(3) An organization is also a trade union if it consists wholly or mainly of –

(a) constituent or affiliated organizations that fulfil the conditions in paragraph (2), or that themselves consist wholly or mainly of constituent or affiliated organizations that fulfil those conditions; or

(b) representatives of any such constituent or affiliated organizations,

and its principal purposes include the regulation of relations between employees and employers or between employees and employers' associations, or the regulation of relations between its constituent or affiliated organizations.

(4) It is immaterial whether an organization described in paragraph (2) or in paragraph (3) is temporar or permanent.

4 "Employers' association"

(1) In this Law, "employers' association" means an organization that is described in paragraph (2) or ir paragraph (3).

(2) An organization is an employers' association if –

(a) it consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions; and

(b) its principal purposes include the regulation of relations between employers of that description or of those descriptions and employees or trade unions.

(3) An organization is also an employers' association if it consists wholly or mainly of –

(a) constituent or affiliated organizations that fulfil the conditions in paragraph (a), or tha themselves consist wholly or mainly of constituent or affiliated organizations that fulfil those conditions; or

(b) representatives of any such constituent or affiliated organizations,

and its principal purposes include the regulation of relations between employers and employees or between employers and trade unions, or the regulation of relations between its constituent or affiliated organizations.

(4) It is immaterial whether an organization described in paragraph (2) or in paragraph (3) is temporar or permanent.

(5) References in this Law to employers' associations include combinations of employers and employers' associations.

5 "Collective employment dispute"

(1) In this Law, "collective employment dispute" 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) a collective agreement exists between the employer or employers and the trade union; and

(c) the dispute relates wholly or mainly to one or more of the matters described in paragraph (2).

(2) The matters to which this paragraph refers are –

(a) the terms of employment of one or more employees;

(b) the conditions in which one or more employees are required to work;

(c) the engagement or non-engagement of one or more persons as employees, or the termination or suspension of employment of one or more employees;

(d) the termination or suspension of the duties of employment of one or more employees;

(e) the allocation of work or the duties of employment as between employees or as between groups of employees;

(f) matters of discipline or grievance;

(g) the membership or non-membership of a trade union on the part of one or more employees;

(h) facilities for officials of trade unions; and

(i) an issue as to whether or not an approved code of practice is being observed by one or more employers or by one or more employees.

(3) A dispute between a Committee of the States and any one or more employees shall, notwithstanding

that the Committee is not the employer of those employees, be treated for the purposes of this Law as a dispute between an employer and those employees if the dispute relates –

(a) to matters that have been referred for consideration by a joint body on which, by virtue of any provision made by or under any enactment, that Committee is represented; or

(b) to matters that cannot be settled without that Committee exercising a power conferred on it by or under any enactment.

(4) It is immaterial that a dispute relates to matters occurring outside Jersey if a person or persons whose actions in Jersey are said to be in contemplation or in furtherance of the dispute is or are likely to be affected in respect of any matter specified in paragraph (2) by the outcome of the dispute.

(5) A dispute to which a trade union is a party shall be treated for the purposes of this Law as a dispute to which employees are parties.

(6) A dispute to which an employers' association is a party shall be treated for the purposes of this Law as a dispute to which employers are parties.

6 Forms of applications

(1) If the form of an application under this Law is prescribed, the application must be made in that form.

(2) If the form of an application under this Law is not prescribed, the Committee shall approve the form in which the application may be made.

(3) If the form of an application under this Law is approved under paragraph (2), the application must be made in that form.

(4) The registrar shall make copies of forms of application under this Law available to applicants on request.

PART 2

REGISTRATION OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

7 Organizations to be registered

(1) A trade union or employers' association shall not do any act in furtherance of any purpose for which the union or association is formed unless it is registered in accordance with this Law.

(2) A person who is an officer or member of a trade union or employers' association shall not do any act in furtherance of any purpose for which the union or association is formed unless it is registered in accordance with this Law.

8 Registers

(1) The Committee shall appoint a person as the registrar of trade unions and employers' associations.

(2) The registrar shall establish and maintain –

(a) a register of trade unions; and

(b) a register of employers' associations.

(3) The register of trade unions shall contain, in respect of each registered trade union, the following information –

(a) the name of the union;

(b) the address of the union;

(c) the name of each person who is an officer of the union;

(d) a copy of the union's constitution;

(e) such other information as may be prescribed.

(4) The register of employers' associations shall contain, in respect of each registered employers' association, the following information –

(a) the name of the association;

(b) the address of the association;

(c) the name of each person who is an officer of the association;

(d) a copy of the association's constitution;

(e) such other information as may be prescribed.

(5) The registers shall be available for public inspection during normal working hours, free of charge, at the office of the registrar.

9 Application for registration

(1) An application for the registration of a trade union or employees' association must comply with this Article.

(2) The application may be made by, but only by –

(a) at least 7 members of the trade union or employers' association; or

(b) an officer of the union or association.

(3) A person may only be an applicant if he or she is authorized by the trade union or employers' association to make the application.

(4) If the application is for the registration of a trade union, it shall contain the information specified in Article 8(3).

(5) If the application is for the registration of an employers' association, it shall contain the information specified in Article 8(4).

(6) The application shall be accompanied by a copy of the constitution of the trade union or employers' association, and the copy shall be verified by each applicant.

(7) If an application fee is prescribed, the application shall be accompanied by that fee.

10 Determination of application

(1) The registrar shall refuse to grant an application for the registration of a trade union or employers' association if, but only if –

(a) any of the purposes of the union or association is unlawful;

(b) the application is not made in accordance with this Law; or

(c) the name of the union or association is the same as the name by which any other union or association is registered, or so nearly resembles such a name as to be likely to mislead any person.

(2) If the registrar refuses to grant an application for the registration of a trade union or employers' association, the registrar shall give each applicant notice in writing of that decision and of the reasons for the decision.

(3) Unless the registrar is required by paragraph (1) to refuse to grant an application for the registration of a trade union or employers' association, he or she shall –

(a) grant the application;

(b) register the union or association in the appropriate register; and

(c) issue to the applicant or applicants a certificate of registration in the prescribed form.

11 Amendment of register

(1) If in respect of a registered trade union or registered employers' association there is any change –

(a) in any information that is required, by paragraph (3) or paragraph (4) of Article 8, to b contained in the register; or

(b) in the constitution of the union or association,

an application must be made within one month of that change, to the registrar, to amend the register accordingly.

(2) The application shall be made by a member or officer of the trade union or employers' association.

(3) A person may only be an applicant if he or she is authorized by the trade union or employers' association to make the application.

(4) If the application is made in respect of a change in the constitution of the trade union or employers' association, it shall be accompanied by a copy of the constitution as so changed, and the copy shall be verified by the applicant.

(5) If an application fee is prescribed, the application shall be accompanied by that fee.

12 Determination of application

(1) The registrar shall refuse to grant an application for the amendment of the register in respect of a trade union or employers' association if, but only if –

(a) the effect of the amendment would be that any of the purposes of the union or association are unlawful;

(b) the application is not made in accordance with this Law; or

(c) the effect of the amendment would be that the name of the union or association is the same as the name by which any other union or association is registered, or would so nearly resemble such a name as to be likely to mislead any person.

(2) If the registrar refuses to grant an application for the amendment of the register in respect of a trade union or employers' association, the registrar shall give the union or association notice in writing of that decision and of the reasons for the decision.

(3) Unless the registrar is required by paragraph (1) to refuse an application to amend the register ir respect of a trade union or employers' association, he or she shall –

(a) grant the application;

(b) amend the register accordingly; and

(c) if the amendment is such as to make it appropriate to amend the certificate of registration, issue to the union or association an amended certificate of registration accordingly.

13 Cancellation of registration on application of union or association

(1) On the application of a member or officer of a trade union or employers' association, the registrar may cancel its registration.

(2) A person may only be an applicant if he or she is authorized by the trade union or employers' association to make the application.

(3) If an application fee is prescribed, the application shall be accompanied by that fee.

(4) If the registrar grants the application, he or she shall give the applicant notice in writing of the registrar's decision.

(5) If the registrar refuses to grant the application, he or she shall give the trade union or employers' association notice in writing of that decision and of the reasons for the decision.

14 Cancellation of registration on other grounds

(1) The registrar shall cancel the registration of a trade union or employers association if any of its purposes are unlawful.

(2) The registrar may cancel the registration of a trade union or employers' association on any of the following grounds –

(a) if its registration has been obtained by fraud or mistake;

(b) if it has contravened Article 11(1);

(c) if, after the registrar has given it not less than 21 days notice in writing to comply with a prescribed requirement, the union or association has failed to comply with that requirement; or

(d) if it has ceased to exist.

(3) The registrar may under paragraph (2) cancel the registration of a trade union or employers' association of his or her own motion or on the application of any person having sufficient *locus standi*.

(4) However, before cancelling the registration of a trade union or employers' association under paragraph (1), or under paragraph (2) on a ground specified in any of sub-paragraphs (a), (b) and (c) of that paragraph, the registrar shall –

(a) give the union or association notice in writing of his or her proposal to do so; and

(b) afford it a reasonable opportunity to be heard on the matter.

(5) If (having complied with paragraph (4)) the registrar decides under paragraph (1) to cancel the registration of a trade union or employers' association or decides under any of sub-paragraphs (a) (b) and (c) of paragraph (2)–

(a) to cancel the registration of a union or association; or

(b) to refuse to grant an application to cancel its registration,

the registrar shall give the union or the association notice in writing of that decision and of the reasons for the decision.

(6) If the registrar decides under any of sub-paragraphs (a), (b) and (c) of paragraph (2) to grant or refus to grant an application to cancel the registration of a trade union or employers' association, the registrar shall also give the applicant notice in writing of that decision and of the reasons for the decision.

(7) A cancellation of the registration of a trade union or employer's association –

(a) under paragraph (1); or

(b) under any of sub-paragraphs (a), (b) and (c) of paragraph (2),

shall not have effect until the expiry of the period of 21 days following the day on which the registrar gives the union or association notice in writing of the decision to cancel its registration.

(8) If a notice of an appeal against the cancellation of the registration of the trade union or employer's association is given within that period of 21 days, the cancellation shall not in any event have effect until the appeal is disposed of.

15 Appeals

(1) The following persons and bodies shall have a right of appeal under this Law to the Royal Court –

(a) any applicant for the registration of a trade union or employers' association, against a refusal

by the registrar under Article 10(1) to grant the application;

(b) a union or association, against a refusal by the registrar under Article 12(1) to grant an application for the amendment of the register in respect of the union or association;

(c) a union or association, against a refusal by the registrar under Article 13(1) to grant an application under that paragraph to cancel the registration of the union or association;

(d) a union or association, against a decision by the registrar under either of paragraphs (1) and (2) of Article 14 to cancel its registration; and

(e) an applicant under Article 14(3) for the cancellation of the registration of a union or association, against a refusal by the registrar under Article 14(2) to grant the application.

(2) An appeal under this Article shall be brought within 21 days after the person or body who has the right of appeal is given notice in writing by the registrar of the decision to which the appeal relates.

(3) On hearing the appeal, the Royal Court may confirm or reverse the decision of the registrar and may make such order as it thinks fit as to the costs of the appeal.

PART 3

STATUS OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

16 Status of trade unions and employers' associations

(1) If a trade union or employers' association is unincorporated, it is capable –

(a) of making contracts; and

(b) of suing and being sued in its own name (whether in proceedings relating to property or founded on contract, tort or any other cause of action),

but this paragraph is subject to paragraph (4).

(2) If a trade union or an employers' association is unincorporated –

(a) all property belonging to the union or association shall be vested in trustees in trust for the union or association;

(b) proceedings for any offence that has allegedly been committed by or on behalf of the union or association may be brought against the union or association in its own name; and

(c) any judgment, order or award made in proceedings of any description that are brought against the union or association is enforceable against the property of the union or association.

(3) A trade union may not be registered under the Companies (Jersey) Law 1991 as a limited company, as defined in Article 3C of that Law.[4]

(4) A trade union or employers' association that is neither incorporated nor registered is incapable of suing in its own name.

(5) This Article does not apply to a trade union, or employers' association, that is a fideicommis over which the Royal Court has jurisdiction by virtue of Article 9 of the Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations.[5]

17 Exclusion of rules against restraint of trade

(1) The purposes of a trade union or employers' association are not, by reason only that they are in restraint of trade, unlawful so as –

(a) to make any member of the union or association liable to criminal proceedings for conspiracy or for any other offence; or

(b) to make any agreement or trust void or voidable.

(2) No rule of a trade union or employers' association is unlawful or unenforceable by reason only that it is in restraint of trade.

18 Employee's liability for breach of contract by industrial action

(1) An employee is not liable in damages to his or her employer for a breach of the employee's contract of employment consisting of –

(a) a cessation of work;

(b) a refusal to work; or

(c) a refusal to work in a manner lawfully required by his or her employer,

in contemplation or furtherance of an employment dispute.

(2) This Article does not affect –

(a) any right or remedy of the employer, other than a remedy specified in paragraph (1); or

(b) any other liability of the employee,

arising out of a breach of a contract of employment.

19 Immunities from liability in tort for industrial action

(1) An act done by a person in contemplation or furtherance of an employment dispute is not actionable in tort by reason only –

(a) that it induces another person to break a contract or interferes or induces any other person to interfere with its performance;

(b) that it consists in the first person's threatening that a contract will be broken (whether or not it is one to which he or she is a party);

(c) that it consists in the first person's threatening that there will be interference with a contract (whether or not it is one to which he or she is a party); or

(d) that it consists in the first person's threatening that he or she will induce another person to break a contract or to interfere with its performance.

(2) An agreement or combination by 2 or more persons to do or procure the doing of any act in contemplation or furtherance of an employment dispute is not actionable in tort if the act is one that, if done without any such agreement or combination, would not be actionable in tort.

(3) An agreement or combination by 2 or more persons to do or procure the doing of any act in contemplation or furtherance of an employment dispute is not a criminal offence if such an act committed by one person would not be a criminal offence.

20 Limitations on immunities from liabilities in tort

(1) Article 19 does not prevent an act done–

(a) by a trade union or employers' association; or

(b) by an official of a union or association,

from being actionable in tort if at the time of the act the union or association is not registered.

(2) Article 19 does not prevent an act done by a trade union from being actionable in tort if–

(a) an approved code of practice provides for the holding of a ballot of members of the union before it does such an act; and

(b) a ballot in respect of the doing of the act has not been held in accordance with an approved

code of practice, or a majority of those balloted do not support the doing of the act.

(3) Article 19 does not prevent an act described in paragraph (1) of that Article from being actionable i tort if –

(a) an approved code of practice defines conduct that is or is not reasonable conduct when done in contemplation or furtherance of an employment dispute; and

(b) one of the facts relied on for the purpose of establishing liability is that the act of the trade union constitutes conduct that, as so defined, is not reasonable conduct.

21 Limitation of damages

(1) In any proceedings in tort brought against a registered trade union, the amount which may be awarded against the union by way of damages in those proceedings shall not exceed £10,000.

(2) Paragraph (1) does not apply –

(a) to any proceedings for negligence, nuisance or breach of duty, to the extent that the proceedings are in respect of personal injury to any person; or

(b) to any proceedings for breach of duty in connection with the ownership, occupation, possession, control or use of moveable or immoveable property.

(3) The States may by Regulations vary the amount specified in paragraph (1).

(4) In this Article –

"duty" means a duty imposed by any enactment or other rule of law; and

"personal injury" includes any disease or impairment of a person's physical or mental condition.

PART 4

RESOLUTION OF COLLECTIVE EMPLOYMENT DISPUTES

22 Jurisdiction in respect of collective employment disputes

(1) Proceedings may be brought before the Jersey Employment Tribunal in respect of a collective employment dispute –

(a) with the consent of each party to the dispute; or

(b) at the request of any party to the dispute, in the circumstances described in paragraph (2).

(2) The circumstances to which this paragraph refers are –

(a) that the body or person making the request considers that as far as is practicable all other available procedures have been applied unsuccessfully to seek to resolve the dispute; and

(b) that a party to the dispute is acting unreasonably in the way in which that party is or is not complying with an available procedure.

(3) For the purposes of paragraph (2), a procedure is an available procedure if–

(a) it is a procedure for the resolution of the dispute that is contained in a collective agreement, a relevant contract of employment or a relevant handbook for employees;

(b) it is a procedure for the resolution of the dispute in accordance with an approved code of practice; or

(c) it is a procedure for the resolution of the dispute that is otherwise established within the trade or industry concerned by this Law or any other Law.

23 Orders and declarations in collective employment disputes

(1) On hearing proceedings in respect of a collective employment dispute that are brought before the Tribunal, it may make –

(a) with the consent of each party to the dispute, an order that is binding on the parties; or

(b) a declaration.

(2) A declaration under paragraph (1) may relate to any of the following things–

(a) the opinion of the Tribunal as to whether any party to the dispute is not observing any relevant terms and conditions;

(b) the interpretation of any terms and conditions of a collective agreement that are relevant to the dispute;

(c) the incorporation into the individual contracts of employment of the employees to whom the dispute relates of any terms and conditions to which either of sub-paragraphs (a) and (b) refers.

(3) In paragraph (2)(a),"any relevant terms and conditions" means –

(a) any terms and conditions of employment that are, in the opinion of the Tribunal, applicable to the case; or

(b) any terms and conditions of employment that are, in the opinion of the Tribunal, not less favourable to the employee or employees concerned than the terms and conditions to which sub-paragraph (a) refers.

24 Incorporation of terms and conditions into contracts of employment

(1) Where the Tribunal makes a declaration under Article 23 that any terms and conditions specified in the declaration are to be incorporated into the individual contract of employment of any employee, it shall from the operative date be a term of the contract of employment between the employer and the employee that those terms and conditions shall be terms and conditions of the contract –

(a) until they are varied by subsequent agreement between the parties or (with effect from the operative date of a subsequent declaration of the Tribunal) by that subsequent declaration; or

(b) until different terms and conditions of employment in respect of the employee concerned are settled through the machinery of negotiation, mediation, conciliation or arbitration for the settlement of terms and conditions of employment in the trade or industry or the undertaking in which the employee concerned is employed.

(2) In paragraph (1),"the operative date" means –

(a) the date on which the Tribunal makes the declaration, if no other operative date is specified in the declaration; or

(b) such other operative date as the Tribunal may direct in the declaration, not being earlier than the date on which the collective employment dispute to which the declaration relates first arose.

PART 5

OTHER PROVISIONS

25 Approval of codes of practice

(1) The Committee may, subject to this Article, by Order approve any code of practice for the purposes of this Law.

(2) An approved code may in particular provide for any of the following matters, namely –

(a) the recognition of trade unions;

(b) the manner in which ballots of members of trade unions may be held to support the doing of acts by unions in contemplation or furtherance of employment disputes;

(c) conduct that is or is not reasonable conduct when done in contemplation or furtherance of employment disputes; and

(d) recommended procedures for the resolution of employment disputes.

(3) Before approving a code of practice, the Committee shall publish a notice in the Jersey Gazette –

(a) stating that a copy of the code of practice will be available for inspection during normal working hours, free of charge, at a place specified in the notice;

(b) specifying a period during which it will be available for inspection (being a reasonable period of not less than 21 days, beginning after the notice is published); and

(c) explaining that anyone may make representations in writing to the Committee in respect of the code of practice at any time before the expiry of the 7 days following the period for inspection,

and the Committee shall make a copy of the code of practice available accordingly for inspection.

(4) Before approving the code of practice, the Committee shall also consult –

(a) the Jersey Advisory and Conciliation Service;

(b) the Employment Forum;

(c) the Policy and Resources Committee, in respect of international agreements and international obligations that relate to employment relations and are applicable to or binding on Jersey; and

(d) such other persons as the Committee considers will be affected, or representatives of such persons.

(5) The Committee shall not proceed to decide whether or not to approve the code of practice until the time limit under paragraph (3) for making representations has elapsed.

(6) In deciding whether or not to approve the code of practice, the Committee shall consider all representations made under this Article in respect of the proposal.

(7) An Order approving a code of practice shall not come into force before the expiry of the period of 28 days commencing on the day on which it is laid before the States.

26 Failure to comply with an approved code of practice

(1) A failure on the part of any person, trade union or employers' association to observe any provision of an approved code of practice issued under this Law does not of itself render that person, union or association, or any member of the union or association, liable to any proceedings.

(2) However, paragraph (1) is subject to Article 20(2).

(3) In any proceedings before a court or before the Tribunal, an approved code of practice is admissible in evidence.

(4) If it appears to the court or the Tribunal that any provision in an approved code of practice is relevant to any question arising in the proceedings, the court or the Jersey Employment Tribunal shall take that provision into account in determining the question.

27 Regulations

(1) The States may make Regulations for any of the following purposes –

(a) prescribing information for the purposes of paragraphs (3) and (4) of Article 8;

(b) prescribing forms of application for the purposes of this Law;

(c) prescribing application fees for the purposes of any of Articles 9(7), 11(5) and 13(3);

(d) prescribing the forms of certificates of registration of trade unions and employers' associations,

for the purposes of Article 10(3);

(e) varying the amount for the time being specified in Article 21(1);

(f) requiring trade unions and employers' associations to keep proper accounts of their financial transactions and their assets and liabilities;

(g) prescribing procedures to be applied by unions and associations for the proper control of their accounting records, cash holdings and receipts and payments;

(h) requiring unions and associations to have their accounts audited periodically;

(i) prescribing qualifications for auditors for the purposes of this Law;

(j) requiring unions and associations to deliver periodically to the registrar prescribed returns of information;

(k) prescribing information to be provided, periodically or otherwise, by unions and associations to their members;

(l) providing for any other matters that may be prescribed under any other provision of this Law.

(2) Regulations made under this Article may in the case of trade unions and employers' associations also impose on any trustees of their property, in respect of such property, the same requirements as may be imposed on unions and associations under any of sub-paragraphs (f), (g), (h), (k) and (j) of paragraph (1).

(3) Regulations made under this Article may provide that any contravention of a Regulation shall be an offence, and may provide that any such offence shall be punishable by a fine.

28 Amendment of other enactments

The enactments specified in the Schedule are amended in the manner specified in the Schedule.

29 Citation and commencement

(1) This Law may be cited as the Employment Relations (Jersey) Law 200-.

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

SCHEDULE

(Article 28)

AMENDMENT OF OTHER ENACTMENTS

1. Amendment of the Jersey Advisory and Conciliation (Jersey) Law 2003

(1) In this paragraph, "principal Law" means the Jersey Advisory and Conciliation (Jersey) Law 2003[6]

(2) In Article 1(1) of the principal Law[7] –

(a) after the definition "Board" there is inserted the following definition –

" 'collective employment dispute' means a collective employment dispute as defined in Article 5 of theEmployment Relations (Jersey) Law 200~~-~~;[8]";

(b) in the definition "employment dispute", for all the words following the words "or with the conditions of labour of any of those workers" there is substituted "or with the rights or duties of an employer or an employee";

(c) after the definition "function" there is inserted the following definition –

" 'individual employment dispute' means an employment dispute that is not a collective employment dispute;".

(3) After Article 1 of the principal Law[9] there is inserted the following Article –

"1A 'Employer' and 'employee'

(1) In this Law –

(a) 'employer' means a person who employs another person; and

(b) 'employee' means a person who is employed by an employer.

(2) For the purposes of paragraph (1), a person is employed by another person if the first person works for the second person under a contract of service or apprenticeship with the second person.

(3) For the purposes of paragraph (1), a person is also employed by another person if the first person enters into any other contract with the second person under which –

(a) the first person undertakes to do, or to perform personally, work or services for the second person; and

(b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person.

(4) It is immaterial whether a contract to which paragraph (2) or paragraph (3) refers is express or implied.

(5) If the contract is express, it is immaterial whether it is oral or in writing.".

(4) In Article 4(3)(b) of the principal Law,[10] for "issued under this Law" there is substituted "approved under Article 25 of the Employment Relations (Jersey) Law 200~~-~~[11]".

(5) Articles 9, 10 and 11 of the principal Law[12] are repealed.

2. Amendment of the Employment (Jersey) Law 2003

(1) In this paragraph, "principal Law" means the Employment (Jersey) Law 2003.[13]

(2) In Article 1(1) of the principal Law[14] –

(a) for the definition "collective agreement" there is substituted the following definition –

" 'collective agreement' means an agreement that has been settled by machinery of negotiation, mediation, conciliation or arbitration to which the parties are –

(a) an employer, or an organization of employers that is representative of a substantial proportion of the employers engaged in the trade or industry concerned; and

(b) employees who are representative of a substantial proportion of the employees engaged in the trade or industry concerned;";

(b) after the definition "collective agreement" there is inserted the following definition –

" 'collective employment dispute' means a collective employment dispute as defined in Article 5 of theEmployment Relations (Jersey) Law 200-;";

(c) the definitions "employ" and "trade union" are deleted;

(d) in the definition "employment dispute", for all the words following "or with the conditions of labour of any of those employees" there is substituted "or with the rights or duties of an employer or an employee";

(e) after the definition "employment dispute", there is inserted the following definition –

" 'Employment Forum' means the body that, under Article 21, is to be regarded for the purposes of this Law as being the Employment Forum;";

(f) after the definition "fixed term contract of employment" there is inserted the following definition –

" 'individual employment dispute' means an employment dispute that is not a collective employment dispute;".

(3) After Article 1 of the principal Law[15] there are inserted the following Articles –

"1A 'Employer' and 'employee'

(1) In this Law –

(a) 'employer' means a person who employs another person; and

(b) 'employee' means a person who is employed by an employer.

(2) For the purposes of paragraph (1), a person is employed by another person if the first person works for the second person under a contract of service or apprenticeship with the second person.

(3) For the purposes of paragraph (1), a person is also employed by another person if the first person enters into any other contract with the second person under which –

(a) the first person undertakes to do, or to perform personally, work or services for the second person; and

(b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person.

(4) It is immaterial whether a contract to which paragraph (2) or paragraph (3) refers is express or implied.

(5) If the contract is express, it is immaterial whether it is oral or in writing.

1B 'Trade union'

(1) In this Law, 'trade union' means an organization described in paragraph (2) or in paragraph (3).

(2) An organization is a trade union if –

(a) it consists wholly or mainly of employees of one or more descriptions; and

(b) its principal purposes include the regulation of relations between employees of that description or of those descriptions and employers or employers' associations.

(3) An organization is also a trade union if it consists wholly or mainly of –

(a) constituent or affiliated organizations that fulfil the conditions in paragraph (2), or that themselves consist wholly or mainly of constituent or affiliated organizations that fulfil those conditions; or

(b) representatives of any such constituent or affiliated organizations,

and its principal purposes include the regulation of relations between employees and employers or between employees and employers' associations, or the regulation of relations between its constituent or affiliated organizations.

(4) It is immaterial whether an organization described in paragraph (2) or in paragraph (3) i temporary or permanent.

1C 'Employers' association'

(1) In this Law, 'employers' association' means an organization that is described in paragraph (2) or in paragraph (3).

(2) An organization is an employers' association if –

(a) it consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions; and

(b) its principal purposes include the regulation of relations between employers of that description or of those descriptions and employees or trade unions.

(3) An organization is also an employers' association if it consists wholly or mainly of –

(a) constituent or affiliated organizations that fulfil the conditions in paragraph (a), or that themselves consist wholly or mainly of constituent or affiliated organizations that fulfil those conditions; or

(b) representatives of any such constituent or affiliated organizations,

and its principal purposes include the regulation of relations between employers and employees or between employers and trade unions, or the regulation of relations between its constituent or affiliated organizations.

(4) It is immaterial whether an organization described in paragraph (2) or in paragraph (3) i temporary or permanent.".

(4) After Article 2 of the principal Law, but before Part 2 of the principal Law,[16] there are inserted the following Articles –

"2A Approval of codes of practice

(1) The Committee may, subject to this Article, by Order approve any code of practice for the purposes of this Law.

(2) Before approving a code of practice, the Committee shall publish a notice in the Jersey Gazette –

(a) stating that a copy of the code of practice will be available for inspection during normal working hours, free of charge, at a place specified in the notice;

(b) specifying a period during which it will be available for inspection (being a reasonable period of not less than 21 days, beginning after the notice is published); and

(c) explaining that anyone may make representations in writing to the Committee in respect of the code of practice at any time before the expiry of the 7 days following the period for inspection,

and the Committee shall make a copy of the code of practice available accordingly for inspection.

(3) Before approving the code of practice, the Committee shall also consult –

(a) the Jersey Advisory and Conciliation Service;

(b) the Employment Forum; and

(c) such persons as the Committee considers will be affected, or representatives of such persons.

(4) The Committee shall not proceed to decide whether or not to approve the code of practice until the time limit under paragraph (2) for making representations has elapsed.

(5) In deciding whether or not to approve the code of practice, the Committee shall consider all representations made under this Article in respect of the proposal.

(6) An Order approving a code of practice shall not come into force before the expiry of the period of 28 days commencing on the day on which it is laid before the States.

2B Failure to comply with approved code of practice

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

(2) In any proceedings before a court or before the Tribunal an approved code of practice shall be admissible in evidence.

(3) If it appears to the court or the Tribunal that any provision in the approved code of practice is relevant to any question arising in the proceedings, the court or the Tribunal shall take that provision into account in determining the question.".

(5) In Article 10 of the principal Law[17] –

(a) in paragraph (2), after "If the employer and the employee so agree" there is inserted "in a relevant agreement";

(b) for paragraph (6) there is substituted the following paragraph–

"(6) The States may by Regulations –

(a) amend any of the periods of time, whether expressed in hours or days, mentioned in this Article; or

(b) specify circumstances in which an employee shall not be entitled to a rest period under this Article.".

(6) In Article 36(1) of the principal Law, for 'sub-paragraph (b) in the definition of "employ" in Article 1' substitute 'Article 1A(3)(b)'.

(7) In Article 65(1)(b) of the principal Law,[18] after "at an appropriate time" there is inserted ",or in any action by a trade union in contemplation or furtherance of an employment dispute (not being action by way of conduct that is specified in a code of practice approved under Article 25 of the

Employment Relations (Jersey) Law 200-[19] as unreasonable conduct when done in contemplation or furtherance of an employment dispute)".

(8) In Article 73 of the principal Law[20] –

(a) in paragraph (2), after"Article" there is inserted "65, 66,";

(b) in paragraph (3), after "at least two-thirds of the fixed term" there is inserted "or 13 weeks (whichever is the longer)".

(9) In Article 74(2) of the principal Law,[21] after "Article" there is inserted "65, 66,".

(10) In Article 81 of the principal Law,[22] after paragraph (2) there is added the following paragraph–

"(3) Articles 89, 90, 91, 92, 93, 94 and 95 shall apply to the Tribunal and to proceedings before it when it is exercising jurisdiction conferred on it by or under any other Law as they apply to the Tribunal and to proceedings before it when it is exercising the jurisdiction conferred on it by or under this Law.".

(11) In Article 86 of the principal Law[23] –

(a) for the heading there is substituted the following heading –

"**Jurisdiction in respect of individual employment disputes**";

(b) paragraph (4) is repealed;

(c) in paragraph (5), the first sentence is repealed;

(d) in paragraph (5), in the second sentence, for"paragraphs (3) and (4)" there is substituted "and (4)";

(e) in paragraph 5, "or collective" is deleted.

(12) In Article 88 of the principal Law[24] –

(a) for the heading there is substituted the following heading –

"**Awards in individual employment disputes**";

(b) in paragraph (1), for "employment dispute" there is substituted "individual employment dispute";

(c) in paragraph (2), after "negotiation" there is inserted ",mediation, conciliation";

(d) in paragraph (4) "or a collective" is deleted.

(e) after paragraph (4), there is added the following paragraph–

"(5) However, no award shall, whether by way of –

(a) a requirement as to the specific performance or specific implementation of a contract of employment; or

(b) a requirement that a person should refrain from committing a breach or threatened breach of such a contract,

have the effect of compelling an employee to do any work or attend at any place for the doing of any work.".

(13) In Article 89(1)(c) of the principal Law,[25] for "may appoint" there is substituted the word "appoint".

(14) In Article 90 of the principal Law,[26] paragraphs (9) and (10) are repealed.

(15) In Article 93(2) of the principal Law,[27] after "may" there is inserted "(subject to Article 88(5))".

(16) In Article 97(2) of the principal Law[28] –

(a) "there are", in the second place where it appears, is deleted;

(b) in sub-paragraph (a), before"records" there is inserted "there are".

(17) After Article 105(2) of the principal Law[29] there is added the following paragraph –

"(3) In the Jersey Advisory and Conciliation (Jersey) Law 2003, in Article 5,[30] for the words 'an industrial tribunal constituted under Article 3 of the Industrial Disputes (Jersey) Law 1956[31]' there shall be substituted the words 'the Jersey Employment Tribunal established by Article 81 of theEmployment (Jersey) Law 2003[32], '".

(18) In Schedule 3 to the principal Law, "The Terms of Employment (Jersey) Regulations 2001[33]" is deleted.

(19) In Schedule 4 to the principal Law[34] –

(a) in paragraph 2, for "general" there is substituted "annual";

(b) paragraphs 4 and 9(2) are repealed;

(c) in paragraph 9(3), "or (2)" is deleted.

[1] *Volume 2003, page 486.*
[2] *Volume 2003, page 502.*
[3] *Volume 2003, page 533.*
[4] *Volume 1990-1991, page 893 and Volume 2002, page 187.*
[5] *Tomes I-III, page 262.*
[6] *Volume 2003, page 141.*
[7] *Volume 2003, page 143.*
[8] *P.19/2005.*
[9] *Volume 2003, page 144.*
[10] *Volume 2003, page 145.*
[11] *P.19/2005.*
[12] *Volume 2003, pages 146 and 147.*
[13] *Volume 2003, page 479.*
[14] *Volume 2003, page 485.*
[15] *Volume 2003, page 489.*
[16] *Volume 2003, page 489.*
[17] *Volume 2003, page 494.*
[18] *Volume 2003, page 525.*
[19] *P.19/2005.*
[20] *Volume 2003, page 529.*
[21] *Volume 2003, page 530.*
[22] *Volume 2003, page 533.*
[23] *Volume 2003, page 535.*
[24] *Volume 2003, page 536.*
[25] *Volume 2003, page 537.*
[26] *Volume 2003, page 539.*
[27] *Volume 2003, page 540.*
[28] *Volume 2003, page 542.*
[29] *Volume 2003, page 546.*
[30] *Volume 2003, page 145.*
[31] *Tome VIII, page 644.*
[32] *Volume 2003, page 533.*
[33] *R&O 32/2001.*
[34] *Volume 2003, page 554.*