

DRAFT EMPLOYMENT (JERSEY) LAW 200-

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by the Employment and Social Security Committee**



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European Convention on Human Rights

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

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

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

REPORT

Introduction

In March 1999, the States approved, in principle, a Proposition (P.227/1998) for the introduction of legislation to provide for a minimum wage system. The report accompanying that proposition pointed out that Minimum Wage Legislation on its own would be ineffective without supporting Employment Legislation, particularly provisions relating to pay statements, unfair dismissal and enforcement. It was noted that the introduction of a Minimum Wage system would be dependent on the timing of new Employment Legislation proposals, adequate resources and law drafting time.

After full consultation on an appropriate legal framework, the Employment and Social Security Committee lodged a Report and Proposition (P.99/2000) the following year, putting forward a phased approach to the introduction of a range of employment issues, the first phase being to concentrate on the basic requirements needed to underpin a Minimum Wage system. When the States debated these proposals in December 2000 an amendment was also approved, adding the requirement to introduce legislation, or amend existing legislation to provide for the regulation of employee/employer relations.

Guiding principles

The Committee recognised that it was important not to underestimate the complexity of employment legislation issues, whilst bearing in mind that heavy regulation was inappropriate for a very small jurisdiction. It was for this reason that the Committee set some guiding principles for legislation that would -

- be effective in tackling the real problems;
- support cohesion in the workforce;
- lay down clear standards of decency;
- support a competitive economy;
- be easily understood and affordable.

Research and consultation

The Committee's approach throughout has been to research and consult extensively, firstly on the principles and priorities^[1] and then on the detail of the legislation. In order to help develop detailed proposals, the Committee made use of an independent and impartial body (the Employment Forum) consisting of nine members (three employer representatives, three employee representatives and three independents).

Since the Forum was established in August 1999, ably chaired by Jurat Nick Herbert, the members of the panel have given a considerable amount of their expertise, time and energy to this important work. Their approach has been to look into the issues in depth from all perspectives, produce a summary paper and then actively consult with all parties in order to achieve a consensus view and try to avoid any unintended consequences. This was very important given the surprisingly numerous ways people are employed and work, and also the variety of conditions under which they do so. Finding solutions that would ensure basic standards of decency in the workplace whilst ensuring businesses could still operate flexibly and competitively, was a key consideration throughout. Following each consultation exercise, the Employment Forum has made recommendations to the Committee on which law drafting briefs have been developed.

The Committee has largely followed these recommendations in full, with two minor exceptions. Firstly the Forum recommended that the sole test for a determination by the Tribunal as to whether a dismissal had been unfair should be one of reasonableness. However, on taking legal advice the Committee considered that some limited automatic protection was also necessary to provide clarity, for example, regarding dismissals whilst pregnant or on maternity leave. Secondly, the Employment Forum had expressed the view that the statutory minimum standard in relation to entitlement to paid annual leave should be 2 weeks (which could not in any case include a Bank or Public Holiday) and that entitlement to paid Bank or Public Holidays should be a matter for individual employer contracts. The Committee considered that, for the sake of clarity and decency, the law should reflect a statutory right to both.

Law Drafting

During 1999 the first stage of the legislative programme commenced when a law drafting brief on Minimum Wage was submitted by the Committee to the Law Draftsman. He confirmed that Minimum Wage Legislation coming into force in isolation would, in practice, be unworkable.

Having regard to the many dimensions present in modern employment relations, the Committee felt it appropriate to develop one consolidated “Employment Law” which not only provided for statutory minimum standards but also established the necessary infrastructure to resolve disputes and ensure compliance.

The Employment (Jersey) Law 200 -

Framework

The Bill presented with this report provides for statutory minimum standards and the necessary protection for employees. It has incorporated existing employment legislation and has been divided into “Parts” covering the following issues -

- definitions;
- entitlement to a statement of terms and conditions of employment;
- Minimum Rest Periods and Annual Leave;
- Minimum Wage;
- Payment of Wages;
- Termination of Employment;
- Unfair Dismissal;
- Enforcement: Establishing an Employment Tribunal.

When this Law comes into force, four pieces of legislation will be repealed, namely -

- Payment of Wages (Jersey) Law 1962;
- Termination of Employment - Minimum Periods of Notice (Jersey) Law 1974;
- Terms of Employment (Jersey) Regulations 1998;
- Industrial Disputes (Jersey) Law 1956.

There is a provision to bring different parts of the Law into effect at different dates, and repeal the corresponding relevant legislation.

The rights and responsibilities set out in current legislation (with the exception of the Industrial Disputes Law) are reflected in the new “Employment (Jersey) Law 200-”, although some changes have been made to modernise provisions and to ensure that each Part integrates effectively.

Provisions

Broadly, the intent behind the various provisions in the new law is as follows -

- Statement of Terms of Employment

The existing ‘Terms of Employment’ regulations have largely been ineffective not only because they were difficult to enforce but also because there were so few mandatory terms required in legislation.

The new Law, like the old one, requires that employing organisations issue each employee with a written statement of the terms and conditions/or contract of their employment within four weeks of commencing work. It sets out in more detail what shall be present in such a statement with subsequent provisions setting out the minimum standards and rules which govern changes to the terms and conditions of employment or changes of employer. Furthermore, enforcement has been strengthened.

- Minimum Rest Periods and Annual Leave

This is a new provision which takes a more simplistic and workable alternative approach to the Working Time Directive, whilst meeting basic standards.

Under this Part of the Law employees will have a statutory right to a minimum uninterrupted rest period of not less than 24 hours in each 7 day period. The ability to average the rest period out over a 14 day period is present, if the employee so agrees.

In addition to a rest day, employees will have a statutory right to have a minimum of two weeks’ paid annual leave, adjusted pro rata if they are not employed with the same employer for the full year. Paid annual leave will be in addition to entitlement

to paid Bank and Public Holidays which presently account for another nine days a year. Rules surrounding notices to claim paid annual leave will be set out in subordinate legislation.

- Minimum Wage

The Law establishes a legislative framework for the operation of a Minimum Wage system in Jersey in accordance with the approach already approved by the States (P.227/98). The Law will require that all workers in the Island are paid at an hourly rate which is equal to or greater than the minimum wage. The Law will also provide that a trainee rate can be paid, for a maximum period of one year, to those individuals undergoing training on an accredited programme.

The “standard” pay of workers will be used to ascertain whether the minimum wage rate has been satisfied. Premium payments such as overtime and shift pay will not count. The only deduction which can be made from an employees pay, which will count towards establishing whether the minimum rate has been satisfied, will be a charge in respect of tied accommodation. The Minimum Wage rate, Trainee rate, and offset for accommodation will be detailed in subordinate legislation. (The Employment Forum is currently consulting on these matters).

Employers will be required to issue workers with a pay statement which records deductions from their wages and sets out how their pay has been computed.

It is recognised that from time to time it will be necessary to adjust the rate of the minimum wage, trainee wage and offset for accommodation. The process is formalised in Law and will require the Forum to consult with interested parties prior to making a recommendation on revised rates to the Employment and Social Security Committee. The Committee is not bound by that recommendation but must justify its reasoning when putting forward proposals to the States.

- Payment of Wages

The provisions detailed in this Law are broadly those set out in the Payment of Wages (Jersey) Law 1962. Some minor changes have been made to ensure that they effectively integrate with the consolidated Law and to reflect modern employment practices.

The Law provides that employees are paid their wages in legal tender and imposes restrictions on partial payment of wages in kind. Under this Law wages must be paid direct to the worker, unless that worker gives express permission for his or her pay to be credited to the bank account of another person. Provision is also present to limit the power of distraint on wages and deductions prior to payment. Wages must be paid at regular intervals of no more than one month, unless specific agreement is otherwise made. Linking with the provisions relating to the Minimum Wage, it will be a statutory requirement that all workers receive an itemised pay statement.

- Termination of Employment

Current legislation, in the form of the Termination of Employment - Minimum Periods of Notice (Jersey) Law 1974 requires minimum periods of notice to be given by employers or employees to terminate an employment and makes provision for related wage payments. The provisions present in the 1974 Law, which broadly provide similar protection as would be found under redundancy type legislation but in a more straightforward way, are reflected in this Bill.

The Law specifies the minimum period of notice to be given by an employer or employee on termination of employment. In essence, the amount of final salary protection is linked to years worked for an employer. Rules are set out in the legislation regarding the calculation of continuous periods of employment (which has a bearing on the notice period required to be given) and matters relating to the change of an employer.

- Unfair Dismissal

This Part of the Law gives protection to employees against arbitrary termination of employment but makes it clear that employees also have responsibilities. The Law stipulates that it is the employer’s right to dismiss employees for good reasons and they are classed as circumstances related to -

- the capability or qualifications of the employee to perform work of the kind which he or she was employed to do;
- the conduct of the employee;
- redundancy;
- the employee could not continue to work without contravention of a Statute (e.g. when a delivery driver loses his licence);

- other substantial reasons which can be justified.

The test of unfair dismissal is one of “reasonableness”. That is to say, having regard to all the circumstances of the case, whether it was reasonable to dismiss the employee or not. However, in certain circumstances the Law states that dismissal of an employee will be classed as “automatically” unfair, if it relates to -

- the assertion of a statutory right;
- a matter relating to pregnancy, childbirth or maternity;
- dismissal on the grounds of union membership or non-membership;
- dismissal on the grounds of taking action to receive the minimum wage.

It is envisaged that dismissal on the grounds of an individual taking part in official industrial action will also be included when the definitions have been developed under the proposed new Employment Relations Law described in R.C.28/2002.

The right to complain of unfair dismissal will depend on the employee having satisfied a qualifying period of service of six months. However, to afford protection to workers who routinely work under fixed term contracts of less than six months, special provisions have been incorporated. If a person working under a fixed term contract of six months or less has worked for at least two thirds of that contract they too will be able to lodge a complaint of unfair dismissal.

The Law does not seek to remove or reduce the importance of the employment contract (whether permanent or for a fixed term) which will remain the primary source of contractual obligations between employee and employer. Therefore, “(j)” category workers will be unable to complain of unfair dismissal simply due to the fact that their individual fixed term contract has expired on a predetermined date which is expressly set out in their contract.

Where a claim of unfair dismissal is referred to the Employment Tribunal, it will determine whether the employee has been dismissed unfairly or not. If it is determined that they have been dismissed unfairly, a financial award will be made which will be payable by the employer to the employee. The value of the compensatory award will depend on length of service and the salary being received by the employee prior to their dismissal. Detailed legislation regarding financial awards will be set out in subordinate legislation. It is recognised that on occasions an employee may have contributed to their dismissal through inappropriate behaviour which falls short of fully justifying a dismissal. If the Tribunal believe that an employee has contributed to their dismissal it will have the power to reduce the value of the compensatory award.

- Managing Disputes

Whilst the Law provides mechanisms to address disputes occurring in an employment relationship, it is expected that if the individual is unable to resolve the situation with the employer then the matter can be referred to the Jersey Advisory and Conciliation Service (JACS) whose staff will initially attempt to resolve matters through negotiation and conciliation. It is expected that at least 80% of all disputes can be effectively resolved in a timely manner by the intervention of JACS thereby reducing costs to all parties. In relation to the minimum wage workers who reasonably believe that they are not receiving, or have not received, the appropriate rate then a number of mechanisms can be utilised to assert their statutory right. For example, they can take the matter up with their employer and have a statutory right to access records which relate to their rate of remuneration. If this presents difficulties, they can seek the help of JACS staff.

- The Employment Tribunal

Should JACS be unable to resolve any particular matter, a formal system, through the Employment Tribunal, can be utilised by parties who believe they have suffered detriment or who feel that their statutory rights have not been granted by their employer. The Law will formally establish the Employment Tribunal as an independent and impartial body created to determine employment relation matters.

It is envisaged that the Employment Tribunal will deal with collective as well as individual disputes under the proposed new Employment Relations Law thus superseding the existing Industrial Disputes Tribunal.

An Employment Tribunal will consist of either one adjudicator or a panel of three, depending on the complexity and financial value of any claim. It is envisaged that generally, sole adjudicators will determine cases involving the payment of wages, minimum wage, holiday and rest day entitlement and matters relating to the issue of statement of terms and conditions of employment. Claims of a complex nature will be heard by a panel of three adjudicators. The panel will consist of a legally qualified chairman and two lay members. One lay member will have an employee representative background and the other an employer background. Detailed rules and procedures regarding the composition and procedures of the Employment Tribunal will be set out in subordinate legislation.

The decision of the Tribunal will be binding on all parties. Hearings will sit in public, although some provisos for private hearings are present for cases of extreme sensitivity.

Empowering provisions are present in the Law enabling the development of subordinate legislation on matters relating to -

- financial awards which can be decided upon by the Employment Tribunal;
- procedures which must be followed by the Tribunal;
- conduct of hearings;
- expenses relating to the membership of the Tribunal panel.

- **Enforcement**

In addition to these mechanisms for resolving differences, the Employment and Social Security Committee will be empowered to appoint Enforcement Officers to ensure compliance of the legislation where appropriate Powers will be vested in these officers to act for the purposes of the Law which requires the relevant persons to -

- produce relevant documents and records;
- provide an explanation of documents and records;
- provide additional information which he or she could reasonably expect to know is needed;
- to establish whether the Law is being complied with.

The Committee believes that this approach has been seen to work well under both the Social Security and Health and Safety legislation. Experience has shown that some employers may not have been aware of the legal requirements and appreciate that the matter is dealt with in a more educative, less adversarial way. In addition, the Committee believes that this will give a viable alternative route for the most vulnerable workers who may be reluctant to complain.

Offences under this Law relate to failure to -

- provide an employee with a written statement of his/her terms of employment in accordance with the requirements of the Law and a failure to provide a revised statement if there is a change in the terms;
- comply with any of the requirements set out in the Law which relate to the Payment of Wages;
- comply with the statutory requirements relating to the proceedings of the Tribunal;
- comply with the statutory requirements of the Minimum Wage.

Conclusion

The draft Employment (Jersey) Law 200- is a very important piece of legislation which provides, for the first time in Jersey, the basis for minimum standards of decency in the employment relationship. It also forms the platform on which other aspects can be introduced over time such as maternity provisions.

Work continues on the development of an "Employment Relations Law" (R.C.28/2002) which will enhance the legislative framework necessary for modern, fair and just industrial relations in the Island. Employment relations legislation will primarily focus on collective issues and best practice suitable for a small jurisdiction such as Jersey. It is hoped to bring the draft Law to the States in the spring subject to the availability of Law Drafting time and to work towards the same appointed day for both this and the Employment (Jersey) Law 200-

The Jersey Advisory and Conciliation Services (JACS), which is already established and soon to be formalised in Law, will provide advice, education, and conciliation whenever possible to ensure the minimum standards required in the Law are realised in the work place. JACS has already established an excellent reputation in a very short time and it is expected that a large proportion of all disputes related to the provisions detailed in the Law can be resolved in a timely manner with their support and without undue costs being incurred by the relevant parties. Should it be necessary, enforcement provisions are present to ensure compliance.

The Committee believes that the Employment (Jersey) Law 200- will provide clear standards of decency for all concerned and reasonable protection, particularly to those most vulnerable in the community who are the least likely to seek redress at present. It should not hinder flexible approaches and competitiveness in the workplace.

The emphasis throughout is on clarity around the terms and conditions of employment from the very start of the working

relationship so that misunderstandings can be minimised. Thereafter, the emphasis is on clear communication of any change to those conditions. Should problems subsequently arise and the parties are unable to resolve their differences, then the support of JACS is available at no cost to the employer and employee. If all these processes fail, then there are quick and effective routes through a Tribunal system without having to incur costs.

Resource and Manpower Statement

A budget of £200,000 was 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). Internal savings within the Department will 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. This could be an external appointment as is the case with both the Social Security and Health and Safety Tribunals, thus demonstrating greater objectivity.

The Committee is confident that the existing budget levels remain adequate for the effective delivery of this Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 7th October 2002 the Employment and Social Security Committee made the following statement before Second Reading of this projet in the States Assembly -

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

Explanatory Note

Article 1 is an interpretation provision.

Article 2 requires an employer to give to his employee a written statement of the terms of his employment, and specifies what it shall contain.

Article 3 requires a supplementary statement under *Article 2* if there is a change in the terms of employment, or in the names of the employer.

Article 4 enables the Committee to amend by Order the matters specified in *Article 2* to be included in the statement.

Article 5 provides that an employer does not have to provide a statement under *Article 2* for an employee who does not normally work more than 8 hours a week.

Article 6 enables a reference to be made to the Employment Tribunal ("the Tribunal") where a statement under *Article 2* has not been provided or where there is a question as to what a statement under *Article 2* should contain.

Article 7 specifies the action that may be taken by the Tribunal on a reference under *Article 6*.

Article 8 is a penal provision to operate in the event of non-compliance with *Articles 2* or *3*.

Article 9 specifies the minimum weekly rest period to be allowed to all employees.

Article 10 specifies the minimum annual leave period to be allowed to all employees.

Article 11 enables the Committee to make Orders specifying the notice which must be given in respect of the taking of annual leave in the event of the contract of employment being silent on the point.

Article 12 and *Schedule 1* specify the rate at which an employee must be paid when he is on leave.

Article 13 makes provision for financial payments in lieu where an employment is terminated with leave being owed either to or by an employee.

Article 14 makes provisions supplementary to *Article 13*.

Article 15 requires workers to be paid the minimum wage.

Article 16 enables the States to make Regulations specifying the minimum wage from time to time.

Article 17 requires the Employment Forum to be consulted before Regulations are made under *Article 16*.

Article 18 and 19 enables the Committee to consult the Employment Forum in other circumstances.

Article 20 and *Schedule 2* make provision for the establishment of the Employment Forum.

Article 21 enables the Committee to make Orders requiring employers to keep records.

Article 22 provides for employees to have access to records kept in accordance with Regulations made under *Article 21*.

Article 23 enables a complaint to be made to the Tribunal if an employer fails to produce records.

Article 24 enables the States to make Regulations requiring employers to provide information additional to that required to be put in *Article 51* statements.

Article 25 entitles a worker to compensation if he is paid less than the minimum wage.

Article 26 enables an enforcement notice to be served on an employer who is paying an employee less than the minimum wage.

Article 27 enables an officer employed for the purposes of the Law to start civil proceedings for sums due to him under

Article 25.

Article 28 enables a penalty notice to be served on an employer who has not complied with an enforcement notice. The amount of the penalty is specified and may be amended by Regulations. Penalties are to be paid to the annual income of the States, and may be enforced as though they were imposed by court order.

Article 29 provides an appeal process against a penalty notice to the Tribunal.

Article 30 gives workers a right not to suffer detriment at the hands of an employer in the event of his seeking to enforce his rights under the Law, or in the event of prosecution of the employer for an offence under the Law.

Article 31 gives workers the ability to enforce their rights under Article 30 before the Tribunal.

Article 32 enables the Tribunal to order compensation to be paid to workers whose rights under Article 30 are infringed.

Article 33 establishes presumptions in minimum wage proceedings.

Article 34 creates offences of paying workers less than the minimum wage, not keeping records as required by the Law, and falsifying records, and provides a 'due diligence' defence.

Article 35 and *36* applies the Law to agency workers and home workers.

Article 37 makes provisions relating to merchant seamen.

Article 38 enables the States to make Regulations applying Part 4 (minimum wages) to persons who are not covered by the Law as presently drafted.

Article 39 makes provision for share fishermen.

Article 40 exempts workers employed by charities, etc. from Part 4 (minimum wages) provided certain conditions are complied with.

Article 41 exempts prisoners from entitlement to the minimum wage.

Article 42 makes special provisions for members of religious communities.

Article 43 provides that superior employers shall be jointly liable with immediate employers to comply with Part 4 (minimum wages).

Article 44 requires wages to be paid in legal tender, cheque, money or postal order, or by credit transfer.

Article 45 enables wages to be paid partially in kind in certain circumstances.

Article 46 requires wages to be paid directly to the employee unless he agrees otherwise.

Article 47 prevents an employer seeking to influence how an employee shall spend his wages.

Article 48 enables deductions to be made under statute or by agreement.

Article 49 limits the power of distraint on wages.

Article 50 requires wages to be paid regularly and at no more than monthly intervals, unless agreed otherwise.

Article 51 requires an employer to provide an itemised pay statement every time he pays an employee to specify the deductions in the statement.

Article 52 enables the Employment and Social Security Committee ("the Committee") to amend the list of matters required by Article 51 to be included in the pay statement.

Article 53 enables a failure to provide a pay statement, or a question as to what should be included in a pay statement, to be referred to the Tribunal.

Article 54 makes provision for the action that the Tribunal may take on a reference under Article 53.

Article 55 is a penal provision to be applied in the event of contravention of Articles 44-54.

Article 56 specifies the minimum period of notice to be given by employer and employee on termination of employment.

Article 57 is supplementary to Article 56 and specifies the method of computation of a period of employment.

Article 58 makes provision where there has been a change of employer.

Article 59 makes provision in respect of various payments that may be due to or from an employee on termination of employment.

Article 60 enables the Committee by Order to amend the various periods of time which have to be taken in account in determining notice to be given to terminate employment.

Article 61 provides employees with a right not to be unfairly dismissed.

Article 62 defines when an employee is dismissed.

Article 63 defines the effective date of termination of employment where employment is terminated either by the employer or the employee.

Article 64 makes general provisions to be applied when determining whether a dismissal is fair.

Article 65 specifies when a dismissal which is related to the employee's trade union membership is fair or unfair.

Article 66 applies the principles in Article 65 to cases of redundancy, as apart from plain dismissal.

Article 67 enables the Committee by Order to prescribe reasons for dismissal which shall be considered as unfair.

Article 68 provides that dismissal because the employee insisted on his statutory rights is unfair.

Article 69 makes special provision where an employee is dismissed for insisting on being paid the minimum wage.

Article 70 applies the principles in Articles 68 and 69 to cases of redundancy.

Article 71 provides that the termination of the employment of a person taken on to cover medical or maternity leave shall not be unfair provided certain conditions are fulfilled.

Article 72 makes pressure brought on an employer by industrial action to be disregarded.

Article 73, 74 and 75 provide that the unfair dismissal provisions shall not apply where an employee has worked for less than a specified period; where an employee's working week is less than a specified number of hours; where an employee has reached retirement age; or where an employee is of compulsory school age.

Article 76 provides for complaints of unfair dismissal to be presented to the Tribunal.

Article 77 enables the Committee to prescribe by Order a scale of compensation awards for unfair dismissal.

Article 78 makes provisions for cases where an employer or employee dies whilst a complaint of unfair dismissal is pending.

Article 79 makes any agreement void if it excludes the provisions of the Law or seeks to prevent a reference to the Tribunal, subject to specified exceptions.

Article 80 is a general provision enabling complaints to be made to the Tribunal for infringements of the Law, and reserves the power of employers and employees to enforce the terms of contracts of employment in the courts.

Article 81 establishes the Employment Tribunal.

Article 82 provides power for the States to make Regulations providing for the constitution, membership and administration of the Tribunal.

Article 83 is the usual limitation of civil liability provided in Jersey for members of a public body.

Article 84 requires Tribunal members to declare their interests in matters before them, and in such cases not to take part in proceedings.

Article 85 enables the appointment of Tribunal administrative staff.

Article 86 defines the Tribunal's jurisdiction.

Article 87 enables the States to make Regulations enlarging or limiting the jurisdiction set out in Article 86.

Article 88 empowers the Tribunal to make awards in cases brought before them.

Article 89 provides the Tribunal with procedural power.

Article 90 enables the Tribunal to sit in private in limited circumstances, and to make orders making the publicity that may be given to evidence brought before it.

Article 91 enables the Committee to make Orders governing the procedure before the Tribunal.

Article 92 provides that the costs of providing the Tribunal shall be borne by States income.

Article 93 gives the Tribunal powers to enforce its awards.

Article 94 provides that giving false evidence, failing to attend on summons, or wilfully failing to give evidence shall be a criminal offence.

Article 95 empowers the Committee to appoint officers to enforce the Law.

Article 96 provides enforcement powers to persons appointed under Article 95.

Article 97 enables information to be passed between officers appointed for different statutory purposes.

Article 98 provides for confidentiality of information obtained under the Law.

Article 99 requires the Committee to publicise the effect of the Law.

Article 100 is a standard clause dealing with offences committed by corporate bodies.

Article 101 enables Regulations to be made by the States and Orders to be made by the Committee, with purposes of the Law.

Article 102 makes an amendment to an existing Law, and contains a construction clause in respect of an Order in Council, both being necessarily consequential on the repeal of previous legislation.

Article 103 and *Schedule 3* repeal certain Laws.

Article 104 and *Schedule 4* make transitional provisions and savings.

Article 105 is the usual citation and commencement clause.

EMPLOYMENT (JERSEY) LAW 200-

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- Schedule 1 - A week's pay.
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EMPLOYMENT (JERSEY) LAW 200-

A LAW to amend and consolidate enactments relating to employers' obligations to specify terms of employment, the payment of wages, the notice required to terminate contracts of employment; to provide for compulsory minimum periods of leave and resting time for employees; to provide employees with rights not to be unfairly dismissed and to be paid a minimum wage; and to repeal and replace enactments for the establishment and jurisdiction of Tribunals to hear and determine employment disputes; and for incidental and connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

PART 1

GENERAL

ARTICLE 1

Interpretation

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

“civil proceedings” means proceedings before the Tribunal or civil proceedings before any court;

“collective agreement” means an agreement which has been settled by machinery of negotiation or arbitration to which the parties are organisations of employers and of employees representative of substantial proportions of the employers and employees engaged in the trade or industry concerned;

“Committee” means the Employment and Social Security Committee;

“employ” means to enter into and perform -

- (a) a contract of service or apprenticeship, whether express or implied, and, if express, whether oral or in writing; or
- (b) subject to Article 36, any other contract, whether express or implied and, if express, whether oral or in writing, whereby the other party to the contract undertakes to do, or perform personally, work or services for the first party to the contract, and the status of the first party to the contract is not, by virtue of the contract, that of a client or customer of any profession or trade or business undertaking carried on by the other party to the contract,

and other parts of speech, grammatical forms, words and expressions derived from the word “employ” shall have corresponding meanings;

“employment dispute” means a dispute between an employer or employers and a worker or workers in the employment of that employer which is connected with the terms of employment or with the conditions of

labour of any of those workers or with the rights and duties of an employer or a worker under this Law but does not include a dispute as to the entering into, or failure to enter into, a contract of employment with a person;

“enforcement notice” shall be construed in accordance with Article 26;

“fixed term contract of employment” means a contract of employment which, according to its terms, will expire on -

- (a) the expiry of a specified period of time;
- (b) a specified date;
- (c) the occurrence or non-occurrence of a specified event; or
- (d) the completion of a specified task or project;

“JACS” means the Jersey Advisory and Conciliation Service established by the Jersey Advisory and Conciliation (Jersey) Law 200-;^[2]

“job”, in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract of employment and the capacity in and place at which he is so employed;

“lock-out” means -

- (a) the closing of a place of employment;
- (b) the suspension of work; or
- (c) the refusal by an employer to continue to employ any number of persons employed by him,

in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;

“minimum wage” shall be construed in accordance with Article 15(3);

“notice” means notice in writing;

“officer acting for the purposes of this Law” means an officer appointed under Article 95;

“pay reference period” shall be construed in accordance with Article 15(4);

“penalty notice” shall be construed in accordance with Article 28;

“person who qualifies for the minimum wage” shall be construed in accordance with Article 15(2) and related expressions shall be construed accordingly;

“prescribe” means prescribed by the Committee by Order;

“relevant agreement”, in relation to an employee, means any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the employee and his employer;

“strike” means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

“trade union” means an organisation (whether temporary or permanent) -

- (a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or
- (b) which consists wholly or mainly of -
 - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
 - (ii) representatives of such constituent or affiliated organisations,

and whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations;

“Tribunal” means the Tribunal established by Article 81;

“wages” means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by a relevant agreement or by or under an enactment, which are payable by virtue of a contract of employment by an employer to an employee for work done or to be done or for services rendered or to be rendered but does not include pensions contributions paid by the employer or any other ancillary non-monetary benefits; and

“worker” (except in the phrases “agency worker” and “home worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under) -

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual,

and any reference to a worker's contract shall be construed accordingly.

(2) This paragraph shall apply in any case where an individual (“the agency worker”) -

- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, an employee, because of the absence of a contract of employment between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(3) In a case where paragraph (2) applies, the other provisions of this Law shall have effect as if there were a contract of employment for the doing of the work by the agency worker made between the agency worker and -

- (a) whichever of the agent and the principal is directly responsible for paying the agency worker in respect of the work; or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

(4) A reference in this Law to a person being remunerated for a pay reference period is a reference to the person being remunerated by his employer in respect of his work in that pay reference period.

(5) This Law shall not apply to the employment of a person under which his work (of whatever description) relates to the employer's family household where -

- (a) (i) the employee resides in the family home of the employer for whom he works,
- (ii) the employee is not a member of that family, but is treated as such, in particular as regards to the provision of accommodation and meals and the sharing of tasks and leisure activities,
- (iii) the employee is neither liable to any deduction, nor to make any payment to the employer, or to any other person, in respect of the provision of living accommodation or meals, and
- (iv) had the work been done by a member of the employer's family, this Law would not apply because the conditions in sub-paragraph (b) would be satisfied; or
- (b) (i) the employee is a member of the employer's family,
- (ii) the employee resides in the family home of the employer, and
- (iii) the employee shares in the tasks and activities of the family,

and the employee's work is done in that context.

(6) This Law shall not apply to the employment of a person under which his work (of whatever description) relates to the employer's family business where -

- (a) the employee is a member of the employer's family;
- (b) the employee resides in the family home of the employer; and
- (c) the employee participates in the running of the family business,

and the work is done in that context.

(7) A reference in this Law to doing work includes a reference to performing services; and "work" and other related expressions shall be construed accordingly.

(8) A reference in this Law to a Part, Article or Schedule by number only and without further identification is a reference to the Part, Article or Schedule of that number in this Law.

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

(10) Unless the context otherwise requires, a reference in this Law to an enactment, or to an Act or subordinate legislation of the United Kingdom, is a reference to that enactment, Act or subordinate legislation as amended from time to time and includes a reference to that enactment, Act or subordinate legislation as extended or applied under another enactment, including another provision of this Law.

PART 2

EMPLOYMENT PARTICULARS

ARTICLE 2

Statement of initial terms of employment

(1) Subject to paragraph (6), not later than 4 weeks after an employee begins employment, the employer shall give to the employee a written statement of the terms of his employment.

(2) A statement given under paragraph (1) shall be signed by the employer, or if the employer is a body corporate or a partnership, by an officer or partner authorized to sign such statements, and shall contain the following particulars -

- (a) the names of the employer and employee;
- (b) the date when the employment began;
- (c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which, in accordance with Articles 57 and 58, counts towards that period);
- (d) the scale or rate of remuneration or the method of calculating remuneration;
- (e) the day on which, and the intervals at which, remuneration is paid (that is, weekly, monthly or other specified intervals) and the method of payment;
- (f) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours);
- (g) any terms and conditions relating to -
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
 - (iii) pensions and pension schemes,
 - (iv) maternity leave,
 - (v) redundancy, and
 - (vi) disciplinary and grievance procedures;
- (h) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
- (i) where the employment is not intended to be permanent -
 - (i) the period for which it is expected to continue,
 - (ii) if it is for a fixed term, the date when it is to end,
 - (iii) any event, the occurrence or non-occurrence of which will terminate it, or
 - (iv) any task or project, the completion of which will terminate it;
- (j) the title of the job which the employee is employed to do or a brief description of the work for which he is employed;
- (k) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer;
- (l) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made; and
- (m) where the employee is required to work outside the Island for a continuous period of more than four weeks -
 - (i) the period for which he is to work outside the Island,
 - (ii) the currency in which remuneration is to be paid while he is working outside the Island,
 - (iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by

reason of his being required to work outside the Island, and

(iv) any terms and conditions relating to his return to the Island.

(3) A statement under paragraph (1) may refer the employee for particulars of any of the matters specified in paragraph (2)(g) to the provisions of some other document which the employee has reasonable opportunity of reading in the course of his employment or which is made reasonably accessible to him in some other way.

(4) A statement under this Article may refer the employee for particulars of either of the matters specified in paragraph (2)(h) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which the employee has reasonable opportunity of reading in the course of his employment or which is made reasonably accessible to him in some other way.

(5) Paragraph (2)(g)(iii) shall not apply to an employee of a body or authority if -

(a) the employee's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any enactment; and

(b) any such provision requires the body or authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.

(6) Where after the beginning of an employee's employment the employee is to begin to work outside the Island for a period of more than four weeks, the statement under paragraph (1) shall be given to him not later than the time when he leaves the Island in order to begin so to work.

(7) A statement under paragraph (1) shall be given to a person even if his employment ends before the end of the period within which the statement is required to be given.

ARTICLE 3

Changes in terms of employment

(1) If, after the date on which a statement is given under Article 2, there is a change in the matters, particulars of which are required by Article 2 to be included or referred to in a statement under Article 2, the employer shall give to the employee a written statement containing particulars of the change.

(2) A statement under this Article shall be given at the earliest opportunity and, in any event, not later than -

(a) 4 weeks after the change in question; or

(b) where that change results from the employee being required to work outside the Island for a period of more than four weeks, the time when he leaves the Island in order to begin so to work, if that is earlier.

(3) A statement under this Article may refer the employee for particulars of any of the matters specified in Article 2(2)(g) to the provisions of some other document which the employee has reasonable opportunity of reading in the course of his employment or which is made reasonably accessible to him in some other way.

(4) A statement under this Article may refer the employee for particulars of either of the matters specified in Article 2(2)(h) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which the employee has reasonable opportunity of reading in the course of his employment or which is made reasonably accessible to him in some other way.

(5) If, after an employer has given to an employee a written statement under Article 2 -

(a) the name of the employer is changed, without any change in the identity of the employer; or

(b) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken,

and there is no change in the terms of employment (other than the name of the employer) included or referred to in the statement, the employer, immediately after the change of name or identity, shall give to the employee a written statement

notifying him of the change.

ARTICLE 4

Power to amend requirement of particulars

The Committee may by Order add to, amend or delete any of the particulars required by Article 2(2) to be contained in a statement under Article 2.

ARTICLE 5

Exceptions

(1) Nothing in this Part shall apply to an employee whose normal hours of employment are less than 8 hours a week.

(2) If an employee should at any time come within the exception specified in paragraph (1), this Part shall cease to apply to that employee from that time.

(3) If an employee should at any time cease to come within the exception specified in paragraph (1), this Part shall apply to that employee as if the employment began at that time.

ARTICLE 6

References to the Tribunal

(1) Where an employer does not give an employee a statement as required by Article 2 or 3 (either because he gives him no statement or because the statement he gives does not comply with what is required), the employee may require a reference to be made to the Tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned.

(2) Where -

(a) a statement purporting to be a statement under Article 2 or 3 has been given to an employee; and

(b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the employee may require the question to be referred to and determined by the Tribunal.

(3) The Tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made -

(a) before the end of the period of 8 weeks beginning with the date on which the employment ceased; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 8 weeks.

ARTICLE 7

Determination of references

(1) Where, on a reference under Article 6(1), the Tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 2 or 3, the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Tribunal.

(2) On determining a reference under Article 6(2) relating to a statement purporting to be a statement under Article 2 or 3, the Tribunal may -

(a) confirm the particulars as included or referred to in the statement given by the employer;

- (b) amend those particulars; or
- (c) substitute other particulars for them,

as the Tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the Tribunal.

ARTICLE 8

Offences under this part

- (1) A person who, being an employer -
 - (a) fails to give to a person employed by him a written statement of the terms of his employment in accordance with Article 2; or
 - (b) where there is a change in the matters included or referred to in a statement under Article 2, fails to give a person employed by him a written statement containing particulars of the change in accordance with Article 3,

shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[3]

(2) On the issue of a summons, or on the arrest and charge of a person, in respect of an offence under paragraph (1) the constable or centenier responsible and, where he is aware of the fact, the Attorney General, shall notify the Committee and the Tribunal in writing of the fact.

(3) Where notification under paragraph (2) has been received the Tribunal shall stay any proceedings which may have been or may be started under Article 6 until the criminal proceedings have been concluded and the time available for an appeal has expired.

PART 3

MINIMUM REST PERIODS AND ANNUAL LEAVE

ARTICLE 9

Weekly rest period

(1) Subject to paragraph (2), an employee shall be entitled to an uninterrupted rest period of not less than 24 hours in each 7-day period during which he works for his employer.

- (2) If the employer and the employee so agree, an employee shall be entitled to either -
 - (a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which he works for his employer; or
 - (b) one uninterrupted rest period of not less than 48 hours in each such 14-day period,

in place of the entitlement provided for in paragraph (1).

- (3) For the purpose of paragraphs (1) and (2), a 7-day period or a 14 day period shall be taken to begin -
 - (a) at such times on such days as may be specified for the purposes of this Article in a relevant agreement; or
 - (b) where there are no provisions of a relevant agreement which apply, at the start of each week or every other week.

(4) In a case where, in accordance with paragraph (3), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular employee shall be taken to begin -

- (a) if the employee's employment began on or before the date on which this Law comes into force, on the date of its coming into force; or

(b) if the employee's employment begins after the date on which this Law comes into force, at the start of the week in which that employment begins.

(5) For the purposes of paragraphs (3) and (4), a week starts at midnight between Saturday and Sunday.

(6) The Committee may by Order amend any of the periods of time, whether expressed in hours or days, mentioned in this Article.

ARTICLE 10

Entitlement to annual leave

(1) Subject to paragraphs (3) and (7), an employee shall be entitled in each leave year -

(a) to a period of leave of 2 weeks or to such other period as may be specified in a relevant agreement, whichever shall be the longer; and either -

(b) to leave on Christmas Day, Good Friday and all public or bank holidays under the Public Holidays and Bank Holidays (Jersey) Law 1951;^[4] or

(c) to leave in substitution for the leave to which he is entitled under paragraph (b) on such other days as may be specified in a relevant agreement, which days shall not be less in total than the total number of days specified in paragraph (b) in respect of the leave year in question.

(2) An employee's leave year, for the purposes of this Article, shall begin -

(a) on such date during the calendar year as may be provided for in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which an employee's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year shall be a proportion of the period applicable under paragraph (1)(a) equal to the proportion of that leave year remaining on the date on which his employment begins.

(4) Subject to paragraph (5), where by virtue of paragraph (2)(b) or (3) the period of leave to which an employee is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(5) Paragraph (4) shall apply only where the employee in question has been employed by that employer for a period of 28 days or longer.

(6) The Committee may by Order amend the period specified in paragraph (1)(a).

ARTICLE 11

Dates on which leave is taken

(1) The Committee may by Order prescribe the period of notice to be given by and to employers in relation to the taking of annual leave by employees in the event that such matters are not included in a relevant agreement.

(2) Before the Committee may make an Order under paragraph (1) it shall consult the Employment Forum and such other organisations as appear to the Committee to be representative of employers and employees on the Island.

ARTICLE 12

Payment in respect of periods of leave

(1) An employee shall be entitled to be paid in respect of any period of leave to which he is entitled under Article

10, at the rate of a week's pay in respect of each week of leave, reduced pro rata for shorter periods of leave.

(2) Schedule 1 shall apply for the purpose of determining the amount of a week's pay for the purposes of this Article.

(3) A right to payment under paragraph (1) shall not affect a right of an employee to remuneration under his contract of employment.

(4) Remuneration paid to an employee under his contract of employment in respect of a period of leave shall go towards discharging any liability of the employer to make payments to the employee under this Article in respect of that period; and, conversely, payment of remuneration to an employee under this Article in respect of a period goes towards discharging any liability of the employer to pay remuneration to the employee under his contract of employment in respect of that period.

ARTICLE 13

Compensation related to entitlement to leave

(1) This Article shall apply where -

- (a) an employee's employment is terminated during the course of his leave year; and
- (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under Article 10(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the employee is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be -

- (a) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the employee under Article 12 in respect of a period of leave determined according to the formula -

$$(A \times B) - C$$

where -

A is the period of leave to which the employee is entitled under Article 10(1),

B is the proportion of the employee's leave year which expired before the termination date, and

C is the period of leave taken by the employee between the start of the leave year and the termination date; or

- (b) such sum as may be specified in a relevant agreement,

whichever is the greater.

(4) Where the proportion of leave taken by the employee exceeds the proportion of the leave year which has expired, he shall compensate his employer by a payment in respect of the excess leave taken in accordance with paragraph (5).

(5) The payment due under paragraph (4) shall be -

- (a) where there are no provisions of a relevant agreement which apply, a sum equal to the amount which would be due to the employee under Article 12 in respect of a period of leave determined according to the formula -

$$X - (Y \times Z)$$

where -

X is the period of leave taken by the employee in the employee's leave year in question,

Y is the period of leave to which the employee is entitled under Article 10(1), and

Z is the proportion of the employee's leave year which expired before the termination date; or

- (b) such sum as may be specified in a relevant agreement,

whichever is the less.

ARTICLE 14

Entitlements under other provisions

Where during any period an employee is entitled to a rest period or annual leave both under a provision of this Part and under a separate provision (including a provision of a relevant agreement) or another enactment, he may not exercise the two rights separately, but may, in taking a rest period or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

PART 4

MINIMUM WAGE

Entitlement to the minimum wage

ARTICLE 15

Workers to be paid at least the minimum wage

(1) A person who qualifies for the minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the minimum wage.

- (2) A person qualifies for the minimum wage if he is an individual who -

(a) is a worker;

(b) is working, or ordinarily works, in the Island or, subject to paragraph (5), in the territorial waters of the Island, under his contract; and

(c) has ceased to be of compulsory school age.

(3) The minimum wage shall be such hourly rate as may from time to time be prescribed.

(4) For the purposes of this Law a "pay reference period" is such period as may be prescribed for the purpose.

(5) Paragraphs (1) to (4) are subject to the foregoing and following provisions of this Law.

(6) The States may by Regulations amend the classes of person who qualify under paragraph (2) for the minimum wage.

(7) No provision shall be made under paragraph (6) which treats persons differently in relation to-

(a) different areas of the Island;

(b) different sectors of employment;

(c) undertakings of different sizes;

(d) different occupations; or

(e) different racial groups or genders.

(8) In paragraph (7) “racial groups” means a group of persons defined by reference to colour, race, nationality, or ethnic or national origins.

Regulations relating to the minimum wage

ARTICLE 16

Determination of hourly rate of remuneration

(1) The States may by Regulations make provision for determining what is the hourly rate at which a person is to be regarded for the purposes of this Law as remunerated by his employer in respect of his work in any pay reference period.

(2) The Regulations may make provision for determining the hourly rate in cases where -

- (a) the remuneration, to the extent that it is at a periodic rate, is at a single rate;
- (b) the remuneration is, in whole or in part, at different rates applicable at different times or in different circumstances;
- (c) the remuneration is, in whole or in part, otherwise than at a periodic rate or rates;
- (d) the remuneration consists, in whole or in part, of benefits in kind; or
- (e) the worker is a trainee.

(3) The Regulations may make provision with respect to -

- (a) circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated;
- (b) the treatment of periods of paid or unpaid absence from, or lack of, work and of remuneration in respect of such periods; and
- (c) circumstances in which a person is to be treated as a trainee for the purposes of paragraph (2)(e).

(4) The provision that may be made by virtue of paragraph (3)(a) includes provision for or in connection with-

- (a) treating a person as, or as not, working for a maximum or minimum time, or for a proportion of the time, in any period; and
- (b) determining any matter to which that paragraph relates by reference to the terms of an agreement.

(5) The Regulations may make provision with respect to -

- (a) what is to be treated as, or as not, forming part of a person’s remuneration, and the extent to which it is to be so treated;
- (b) the valuation of benefits in kind;
- (c) the treatment of deductions from earnings; and
- (d) the treatment of any charges or expenses which a person is required to bear.

(6) The Regulations may make provision with respect to -

- (a) the attribution to a period, or the apportionment between two or more periods, of the whole or any part of any remuneration or work, whether or not the remuneration is received or the work is done within the period or periods in question;
- (b) the aggregation of the whole or any part of the remuneration for different periods; and

- (c) the time at which remuneration is to be treated as received or accruing.
- (7) Paragraphs (2) to (6) are without prejudice to the generality of paragraph (1).
- (8) No provision shall be made under this Article which treats the same circumstances differently in relation to -
 - (a) different areas of the island;
 - (b) different sectors of employment;
 - (c) undertakings of different sizes;
 - (d) persons of different ages;
 - (e) persons of different occupations; or
 - (f) persons of different racial groups or gender.
- (9) In paragraph (8) “racial groups” means a group of persons defined by reference to colour, race, nationality, or ethnic or national origins.

The Employment Forum

ARTICLE 17

The first Regulations and Orders: referral to the Employment Forum

- (1) Before the Committee makes an Order under Article 15(3) or (4) or the States make Regulations under Article 15(6), or Article 16, the Committee shall refer the matters specified in paragraph (2) to the Employment Forum for their consideration.
 - (2) The matters referred to in paragraph (1) are -
 - (a) what single hourly rate should be prescribed under Article 15(3) as the minimum wage;
 - (b) what period or periods should be prescribed under Article 15(4);
 - (c) what method or methods should be used for determining under Article 16 the hourly rate at which a person is to be regarded as remunerated for the purposes of this Law; and
 - (d) whether any, and if so what, amendments should be made to the classes of person who qualify under Article 15(2) for the minimum wage.
 - (3) Where matters are referred to the Employment Forum under paragraph (1), the Forum shall, after considering those matters, make a report to the Committee which shall contain the Forum’s recommendations about each of those matters.
 - (4) If, following the report of the Employment Forum under paragraph (3), the Committee decides -
 - (a) not to make an Order, or not to recommend the States to make any Regulations, implementing the Forum’s recommendations;
 - (b) to make an Order, or to recommend the States to make Regulations, implementing only some of the Forum’s recommendations;
 - (c) to make an Order under Article 15(3) prescribing a single hourly rate which is different from the rate recommended by the Forum;
 - (d) to make an Order, or to recommend the States to make Regulations, which in some other respect differ from the recommendations of the Forum; or

- (e) to make an Order, or to recommend the States to make Regulations, which do not relate to a recommendation of the Forum,

the Committee shall lay a report before the States containing a statement of the reasons for the decision.

(5) If the Employment Forum fail to make their report under paragraph (3) within the time allowed for doing so under Article 19, any power of the Committee to make an Order or of the States to make Regulations under this Law shall be exercisable as if paragraph (1) had not been enacted.

ARTICLE 18

Referral of matters to the Employment Forum at any time

(1) The Committee may at any time refer to the Employment Forum such matters relating to this Law as the Committee thinks fit.

(2) Where matters are referred to the Employment Forum under paragraph (1), the Forum shall, after considering those matters, make a report to the Committee which shall contain the Forum's recommendations about each of those matters.

(3) If on a referral under this Article -

(a) the Committee seeks the opinion of the Employment Forum on a matter falling within Article 17(2);

(b) the Forum's report under paragraph (2) contains recommendations in relation to that matter; and

(c) implementation of any of those recommendations involves the exercise of any power to make Regulations under Articles 15 to 18,

Article 17(4) shall apply in relation to the report, so far as relating to the recommendations falling within sub-paragraph (c), as it applies in relation to a report under Article 17(3).

(4) If on a referral under this Article -

(a) the Committee seeks the opinion of the Employment Forum on any matter falling within Article 17(2); but

(b) the Forum fail to make their report under paragraph (2) within the time allowed under Article 19,

the States may make Regulations under Articles 15 to 18 as if the opinion of the Forum had not been sought in relation to that matter.

ARTICLE 19

Referrals to, and reports of, the Employment Forum: supplementary

(1) This Article applies where matters are referred to the Employment Forum under Article 17 or 18.

(2) The Committee may by notice require the Employment Forum to make their report within such time as may be specified in the notice.

(3) The time allowed to the Employment Forum for making their report may be extended by further notice given to them by the Committee.

(4) Before arriving at the recommendations to be included in their report, the Employment Forum shall consult -

(a) such organisations representative of employers as they think fit;

(b) such organisations representative of workers as they think fit; and

(c) if they think fit, any other body or person.

- (5) In considering what recommendations to include in their report, the Employment Forum -
 - (a) shall have regard to the effect of this Law on the economy of the Island as a whole and on competitiveness; and
 - (b) shall take into account any additional factors which the Committee specifies in referring the matters to them.
- (6) The report of the Employment Forum shall -
 - (a) identify the members of the Forum making the report;
 - (b) explain the procedures adopted in respect of consultation, the taking of evidence and the receiving of representations;
 - (c) set out the reasons for their recommendations; and
 - (d) if the Committee has specified any additional factor to be taken into account under paragraph (5)(b), state that they have taken that factor into account in making their recommendations.
- (7) The Committee shall -
 - (a) lay a copy of any report of the Employment Forum before the States; and
 - (b) arrange for the report to be published.
- (8) In this Article -

“recommendations” means the recommendations required to be contained in a report under Article 17(3) or 18(2); and

“report” means the report which the Employment Forum are required to make under Article 17(3) or 18(2) on the matters referred to them as mentioned in paragraph (1).

ARTICLE 20

The Employment Forum

(1) Subject to the following provisions of this Article, the body which is to be regarded for the purposes of this Law as being the Employment Forum is the non-statutory Employment Forum.

(2) In this Law “the non-statutory Employment Forum” means the unincorporated body of persons known as “the Employment Forum” which was established by the Committee before the passing of this Law for the purpose of making recommendations relating to the establishment, application and operation of a minimum wage.

(3) The referral by the Committee to the non-statutory Employment Forum at any time before the coming into force of this Law of matters (however described) corresponding to those specified in Article 17(2) shall be treated as the referral required by Article 17(1) unless the Committee otherwise determines.

(4) The referral by the Committee to the non-statutory Employment Forum at any time before or after the coming into force of this Law, but before the appointment of the body mentioned in paragraph (9), of matters other than those mentioned in paragraph (3) shall be treated as a referral under Article 18(1) unless the Committee otherwise determines.

(5) The report of the non-statutory Employment Forum (whether made before or after the coming into force of this Law) to the Committee containing the Forum’s recommendations about -

- (a) the matters which are to be treated by virtue of paragraph (3) as referred under Article 17(1); or
- (b) the matters which are to be treated by virtue of paragraph (4) as referred under Article 18(1),

shall be treated as the report of the Employment Forum under Article 17(3) or 18(2) on the referral in question unless the

Committee, whether before or after the making of the report, makes a determination under paragraph (3) or (4) in relation to the referral.

(6) If, in the case of the matters described in paragraph (5)(a) or any particular matters such as are described in paragraph (5)(b), the Committee has, before the coming into force of this Law -

- (a) requested the non-statutory Employment Forum to make their report within a specified time; or
- (b) having made such a request, extended the time for making the report,

the request shall be treated as a requirement imposed under Article 19(2) and any such extension shall be treated as an extension under Article 19(3).

(7) Accordingly, if -

- (a) the Committee has not made a determination under paragraph (3); and
- (b) the non-statutory Employment Forum fail to make the report required by Article 17(3) within the time allowed under this Law,

Article 17(5) shall apply.

(8) The non-statutory Employment Forum shall not be regarded as the body which is the Employment Forum for the purposes of this Law in the case of any referral under Article 17(1) or 18(1) which is made after -

- (a) the non-statutory Employment Forum have made their report under Article 17(3);
- (b) the time allowed under this Law to the non-statutory Employment Forum for making that report has expired without the report having been made; or
- (c) the Committee has made the determination under paragraph (3).

(9) The Committee may at any time appoint a body, to be known as “the Employment Forum”, to discharge the functions conferred or imposed on the Employment Forum under this Law.

(10) Schedule 2 shall have effect with respect to the constitution and proceedings of the body appointed under paragraph (9).

(11) Where the Committee exercises the power conferred by paragraph (9), the body which is to be regarded for the purposes of this Law as being the Employment Forum as respects the referral of any matter to the Employment Forum by the Committee after the exercise of the power is the body appointed under that paragraph.

(12) If the Committee makes the determination under paragraph (3), the power conferred by paragraph (9) shall be exercised and the referral required by Article 17(1) shall be made to the body appointed under paragraph (9).

(13) If the Committee makes a determination under paragraph (3) or (4)-

- (a) notice of the determination shall be given to the non-statutory Employment Forum; and
- (b) a copy of the notice shall be laid before the States.

(14) No determination shall be made under paragraph (3) or (4) more than 12 months after the passing of this Law.

(15) A member of the body appointed under paragraph (9) shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

Records

Duty of employers to keep records

For the purposes of this Law, the Committee may by Order prescribe -

- (a) the records which shall be kept by employers;
- (b) the form and manner in which records prescribed under sub-paragraph (a) shall be kept; and
- (c) the period for which such records shall be kept.

ARTICLE 22

Worker's right of access to records

(1) A worker may, in accordance with the following provisions of this Article -

- (a) require his employer to produce any relevant records; and
- (b) inspect and examine those records and copy any part of them.

(2) The rights conferred by paragraph (1) shall be exercisable only if the worker believes on reasonable grounds that he is or may be being, or has or may have been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage.

(3) The rights conferred by paragraph (1) shall be exercisable only for the purpose of establishing whether or not the worker is being, or has been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage.

(4) The rights conferred by paragraph (1) shall be exercisable -

- (a) by the worker alone; or
- (b) by the worker accompanied by such other person as the worker may think fit.

(5) The rights conferred by paragraph (1) shall be exercisable only if the worker gives notice (a "production notice") to his employer requesting the production of any relevant records relating to such period as may be described in the notice.

(6) If the worker intends to exercise the right conferred by paragraph (4)(b), the production notice shall contain a statement of that intention.

(7) Where a production notice is given, the employer shall give the worker reasonable notice of the place and time at which the relevant records will be produced.

(8) The place at which the relevant records are produced shall be -

- (a) the worker's place of work;
- (b) any other place at which it is reasonable, in all the circumstances, for the worker to attend to inspect the relevant records; or
- (c) such other place as may be agreed between the worker and the employer.

(9) The relevant records shall be produced -

- (a) before the end of the period of 14 days following the date of receipt of the production notice; or
- (b) at such later time as may be agreed during that period between the worker and the employer.

(10) In this Article -

“records” means records which the worker’s employer is required to keep and, at the time of receipt of the production notice, preserve in accordance with Article 21; and

“relevant records” means such parts of, or such extracts from, any records as are relevant to establishing whether or not the worker has, for any pay reference period to which the records relate, been remunerated by the employer at a rate which is at least equal to the minimum wage.

ARTICLE 23

Failure of employer to allow access to records

- (1) A complaint may be lodged with the Tribunal by a worker on the ground that the employer -
 - (a) failed to produce some or all of the relevant records in accordance with Article 22(8) and (9); or
 - (b) failed to allow the worker to exercise some or all of the rights conferred by Article 22(1)(b) or (4)(b).
- (2) Where the Tribunal finds a complaint under this Article well-founded, the Tribunal shall -
 - (a) make a declaration to that effect; and
 - (b) make an award that the employer pay to the worker a sum equal to 80 times the hourly amount of the minimum wage (as in force when the award is made).
- (3) The Tribunal shall not consider a complaint under this Article unless it is lodged with the Tribunal before the expiry of the period of 13 weeks following -
 - (a) the end of the period of 14 days mentioned in Article 22(9)(a); or
 - (b) in a case where a later day was agreed under Article 22(9)(b), that later day.
- (4) Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under this Article to be lodged before the expiry of the period of 13 weeks mentioned in paragraph (3), the Tribunal may consider the complaint if it is lodged within such further period as the Tribunal considers reasonable.
- (5) Expressions used in this Article and in Article 22 have the same meaning in this Article as they have in that Article.

ARTICLE 24

Employer to provide worker with minimum wage statement

- (1) The States may by Regulations make provision for the purpose of conferring on a worker the right to be given by his employer, at or before the time at which any payment of remuneration is made to the worker, a written statement.
- (2) Regulations made under paragraph (1) may make provision with respect to the contents of any such statement and may, in particular, require it to contain -
 - (a) specified information relating to this Part or any Regulations made under it; or
 - (b) specified information for the purpose of assisting the worker to determine whether he has been remunerated at a rate at least equal to the minimum wage during the period to which the payment of remuneration relates.
- (3) Any statement required to be given under this Article to a worker by his employer may, if the worker is an employee, be included in the written itemised pay statement required to be given to him by his employer under Article 51.

Enforcement

ARTICLE 25

Non-compliance: worker entitled to additional remuneration

(1) If a worker who qualifies for the minimum wage is remunerated for any pay reference period by his employer at a rate which is less than the minimum wage, the worker shall be taken to be entitled under his contract to be paid, as additional remuneration in respect of that period, the amount described in paragraph (2).

(2) The amount referred to in paragraph (1) is the difference between -

- (a) the relevant remuneration received by the worker for the pay reference period; and
- (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the minimum wage.

(3) In paragraph (2) “relevant remuneration” means remuneration which falls to be brought into account for the purposes of Regulations under Article 16.

ARTICLE 26

Power of officer to issue enforcement notice

(1) If an officer acting for the purposes of this Law is of the opinion that a worker who qualifies for the minimum wage has not been remunerated for any pay reference period by his employer at a rate at least equal to the minimum wage, the officer may serve a notice (an “enforcement notice”) on the employer requiring the employer to remunerate the worker for any such pay reference periods ending on or after the date of the notice at a rate equal to the minimum wage.

(2) An enforcement notice may also require the employer to pay to the worker within such time as may be specified in the notice the sum due to the worker under Article 25 in respect of the employer’s previous failure to remunerate the worker at a rate at least equal to the minimum wage.

(3) The same enforcement notice may relate to more than one worker (and, where it does so, may be so framed as to relate to workers specified in the notice or to workers of a description so specified).

(4) A person on whom an enforcement notice is served may appeal against the notice before the end of the period of 4 weeks following the date of service of the notice.

(5) An appeal under paragraph (4) shall lie to the Tribunal.

(6) On an appeal under paragraph (4), the Tribunal shall dismiss the appeal unless it is established-

- (a) that, in the case of the worker or workers to whom the enforcement notice relates, the facts are such that an officer who was aware of them would have had no reason to serve any enforcement notice on the appellant;
- (b) where the enforcement notice relates to 2 or more workers, that the facts are such that an officer who was aware of them would have had no reason to include some of the workers in any enforcement notice served on the appellant; or
- (c) where the enforcement notice imposes a requirement under paragraph (2) in relation to a worker -
 - (i) that no sum was due to the worker under Article 25, or
 - (ii) that the amount specified in the notice as the sum due to the worker under Article 25 is incorrect,

and in this paragraph any reference to a worker includes a reference to a person whom the enforcement notice purports to treat as a worker.

(7) Where an appeal is allowed by virtue of paragraph (6)(a), the Tribunal shall rescind the enforcement notice.

(8) If, in a case where paragraph (7) does not apply, an appeal is allowed by virtue of paragraph (6)(b) or (c) -

- (a) the Tribunal shall rectify the enforcement notice; and

(b) the enforcement notice shall have effect as if it had originally been served as so rectified.

(9) The powers of the Tribunal in allowing an appeal in a case where paragraph (8) applies shall include power to rectify, as the Tribunal may consider appropriate in consequence of its decision on the appeal, any penalty notice which has been served under Article 28 in respect of the enforcement notice.

(10) Where a penalty notice is rectified under paragraph (9), it shall have effect as if it had originally been served as so rectified.

ARTICLE 27

Non-compliance: power of officer to sue on behalf of worker

(1) If an enforcement notice is not complied with in whole or in part, an officer acting for the purposes of this Law may, on behalf of any worker to whom the notice relates, and on receipt of a written request to do so, commence other civil proceedings for the recovery, on a claim in contract, of any sums due to the worker by virtue of Article 25.

(2) The powers conferred by paragraph (1) for the recovery of sums due from an employer to a worker shall not be in derogation of any right which the worker may have to recover such sums by civil proceedings, but in the event of the worker taking such proceedings the officer shall immediately discontinue any proceedings taken by him on behalf of the worker under paragraph (1).

ARTICLE 28

Financial penalty for non-compliance

(1) If an officer acting for the purposes of this Law is satisfied that a person on whom an enforcement notice has been served has failed, in whole or in part, to comply with the notice, the officer may serve on that person a notice (a "penalty notice") requiring the person to pay a financial penalty to the Committee.

(2) A penalty notice shall state -

(a) the amount of the financial penalty;

(b) the time within which the financial penalty is to be paid (which shall not be less than 4 weeks from the date of service of the notice);

(c) the period to which the financial penalty relates;

(d) the matters which appear to the officer to constitute the non-compliance with the enforcement notice; and

(e) the calculation of the amount of the financial penalty.

(3) The amount of the financial penalty shall be calculated at a rate equal to twice the minimum wage in force at the date of the penalty notice, in respect of each worker to whom the failure to comply relates, for each day during which the failure to comply has continued in respect of the worker.

(4) The States may by Regulations from time to time amend the multiplier for the time being specified in paragraph (3) in relation to the minimum wage.

(5) A financial penalty under this Article shall be recoverable by action before the court by an officer acting for the purposes of this Law.

(6) Where a person has appealed under Article 26(4) against an enforcement notice and the appeal has not been withdrawn or finally determined, then, notwithstanding the appeal -

(a) the enforcement notice shall have effect; and

(b) an officer may serve a penalty notice in respect of the enforcement notice.

(7) If, in a case falling within paragraph (6), an officer serves a penalty notice in respect of the enforcement notice, the penalty notice -

- (a) shall not be enforceable until the appeal has been withdrawn or finally determined; and
- (b) shall be of no effect if the enforcement notice is rescinded as a result of the appeal; but
- (c) subject to sub-paragraph (b) and Article 29(4) and (6)(a), as from the withdrawal or final determination of the appeal shall be enforceable as if sub-paragraph (a) had not had effect.

(8) Any sums received by the Committee by virtue of this Article shall be paid into the annual income of the States.

- (9) In this Article “court” means either the Royal Court or the Petty Debts Court.

ARTICLE 29

Appeals against penalty notices

(1) A person on whom a penalty notice is served may appeal against the notice before the end of the period of 4 weeks following the date of service of the notice.

- (2) An appeal under paragraph (1) shall lie to the Tribunal.

- (3) On an appeal under paragraph (1), the Tribunal shall dismiss the appeal unless it is shown-

- (a) that, in the case of each of the allegations of failure to comply with the enforcement notice, the facts are such that an officer who was aware of them would have had no reason to serve any penalty notice on the appellant;
- (b) that the penalty notice is incorrect in some of the particulars which affect the amount of the financial penalty;
or
- (c) that the calculation of the amount of the financial penalty is incorrect,

and for the purposes of any appeal relating to a penalty notice, the enforcement notice in question shall (subject to rescission or rectification on any appeal brought under Article 26) be taken to be correct.

- (4) Where an appeal is allowed by virtue of paragraph (3)(a), the Tribunal shall rescind the penalty notice.

- (5) If, in a case where paragraph (4) does not apply, an appeal is allowed by virtue of paragraph (3)(b) or (c) -

- (a) the Tribunal shall rectify the penalty notice; and
- (b) the penalty notice shall have effect as if it had originally been served as so rectified.

(6) Where a person has appealed under paragraph (1) against a penalty notice and the appeal has not been withdrawn or finally determined, the penalty notice -

- (a) shall not be enforceable until the appeal has been withdrawn or finally determined; but
- (b) subject to paragraph (4) and Article 28(7)(a) and (b), as from the withdrawal or final determination of the appeal shall be enforceable as if sub-paragraph (a) had not had effect.

Rights not to suffer unfair dismissal or other detriment

ARTICLE 30

The right not to suffer detriment

(1) A worker shall have the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that -

- (a) any action was taken, or was proposed to be taken, by or on behalf of the worker with a view to enforcing, or otherwise securing the benefit of, a right of the worker's to which this Article applies;
 - (b) the employer was prosecuted for an offence under Article 34 as a result of action taken by or on behalf of the worker for the purpose of enforcing, or otherwise securing the benefit of, a right of the worker's to which this Article applies; or
 - (c) the worker qualifies, or will or might qualify, for the minimum wage or for a particular rate of minimum wage.
- (2) It shall be immaterial for the purposes of paragraph (1)(a) or (b) -
- (a) whether or not the worker has the right; or
 - (b) whether or not the right has been infringed,

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed shall be made in good faith.

- (3) This Article shall apply to -
- (a) any right conferred by, or by virtue of, any provision of this Law for which the remedy for its infringement is by way of a complaint to the Tribunal; and
 - (b) any right conferred by Article 25.

ARTICLE 31

Enforcement of the right

- (1) A worker may lodge a complaint to the Tribunal that he has been subjected to a detriment in contravention of Article 30.
- (2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
- (3) The Tribunal shall not consider a complaint under this Article unless it is lodged -
- (a) before the end of the period of 8 weeks beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be lodged before the end of that period of 8 weeks.
- (4) For the purposes of paragraph (3) -
- (a) where an act extends over a period, the "date of the act" means the last day of that period; and
 - (b) a deliberate failure to act shall be treated as done when it was decided on,

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

ARTICLE 32

Remedies

- (1) Where the Tribunal finds well-founded a complaint under Article 31 of a detriment, the Tribunal -

- (a) shall make a declaration to that effect; and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) The amount of the compensation awarded shall, subject to paragraph (2), be such as the Tribunal considers just and equitable in all the circumstances having regard to -

- (a) the infringement to which the complaint relates; and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss referred to in paragraph (2)(b) shall be taken to include -

- (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
- (b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss referred to in paragraph (2)(b) the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the customary law.

(5) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The Committee may by Order prescribe the maximum amount of compensation that may be awarded under paragraph (2).

ARTICLE 33

Burden of proof

(1) Where, in civil proceedings, any question arises as to whether an individual qualifies or qualified at any time for the minimum wage, it shall be presumed that the individual qualifies or, as the case may be, qualified at that time for the minimum wage unless the contrary is established.

(2) Where, in civil proceedings, a person seeks to recover on a claim in contract the amount described as additional remuneration in Article 25(1), it shall be presumed for the purposes of the proceedings, so far as relating to that amount, that the worker in question was remunerated at a rate less than the minimum wage unless the contrary is established.

Offences

ARTICLE 34

Offences

(1) If the employer of a worker who qualifies for the minimum wage refuses or wilfully neglects to remunerate the worker for any pay reference period at a rate which is at least equal to the minimum wage, that employer shall be guilty of an offence.

(2) If a person who is required to keep or preserve any record in accordance with Orders under Article 21 fails to do so, that person shall be guilty of an offence.

(3) If a person makes, or knowingly causes or allows to be made, in a record required to be kept in accordance with Regulations under Article 21 any entry which he knows to be false in a material particular, that person shall be guilty of an offence.

(4) If a person, for purposes connected with the provisions of this Part, produces or furnishes, or knowingly causes or allows to be produced or furnished, any record or information which he knows to be false in a material particular,

that person shall be guilty of an offence.

(5) Where the commission by any person of an offence under paragraph (1) or (2) is due to the act or default of some other person, that other person shall also be guilty of the offence.

(6) A person who aids, abets, counsels or procures the commission of an offence under this Part shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

(7) A person may be charged with and convicted of an offence by virtue of paragraph (5) whether or not proceedings are taken against any other person.

(8) In any proceedings for an offence under paragraph (1) or (2) it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this Part, and of any relevant Regulations made under it, were complied with by himself and by any person under his control.

(9) A person guilty of an offence under paragraph (1) or (2) shall be liable to a fine not exceeding level 4 on the standard scale.^[5]

(10) A person guilty of an offence under paragraph (3) or (4) shall be liable to imprisonment for a term not exceeding 12 months, or to a fine, or both.

Special classes of person

ARTICLE 35

Agency workers who are not otherwise “workers”

(1) This Article applies in any case where an individual (“the agency worker”) -

- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(2) In a case where this Article applies, the other provisions of this Law shall have effect as if there were a worker’s contract for the doing of the work by the agency worker made between the agency worker and -

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

ARTICLE 36

Home workers who are not otherwise “workers”

(1) In determining for the purposes of this Part whether a home worker is or is not a worker, sub-paragraph (b) in the definition of “employ” in Article 1 shall have effect as if for the word “personally” there were substituted “(whether personally or otherwise)”.

(2) In this Article “home worker” means an individual who contracts with a person, for the purposes of that person’s business, for the execution of work to be done in a place not under the control or management of that person.

ARTICLE 37

Mariners

For the purposes of this Part, an individual employed to work on board a ship registered in the Island under the Merchant Shipping Act 1894 of the United Kingdom shall be treated as an individual who under his contract ordinarily works in the Island unless -

- (a) the employment is wholly outside the Island; or
- (b) the person is not ordinarily resident in the Island,

and related expressions shall be construed accordingly.

Extensions

ARTICLE 38

Power to apply Part 4 to individuals who are not otherwise “workers”

The States may by Regulations make provision for this Part to apply, with or without modifications, as if -

- (a) any individual of a specified description who would not otherwise be a worker for the purposes of this Part were a worker for those purposes;
- (b) there were in the case of any such individual a worker’s contract of a specified description under which the individual works; and
- (c) a person of a specified description were the employer under that contract.

Exclusions

ARTICLE 39

Share fishermen

A person -

- (a) employed as master, or as a member of the crew, of a fishing vessel; and
- (b) remunerated, in respect of that employment, only by a share in the profits or gross earnings of the vessel,

shall not qualify for the minimum wage in respect of that employment.

ARTICLE 40

Workers employed by charities, etc.

(1) A worker employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body shall only qualify for the minimum wage in respect of that employment if he receives, or under the terms of his employment (apart from this Part) is entitled to -

- (a) any monetary payments other than amounts payable in respect of expenses -
 - (i) actually incurred in the performance of his duties, or
 - (ii) reasonably estimated as likely to be or to have been so incurred; or
- (b) any benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment.

(2) A person who would satisfy the conditions in paragraph (1) but for receiving monetary payments made solely for the purpose of providing him with means of subsistence shall be taken to satisfy those conditions if -

(a) he is employed to do the work in question as a result of arrangements made between a charity acting in pursuance of its charitable purposes and the body for which the work is done; and

(b) the work is done for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.

(3) For the purposes of paragraph (1)(b) -

(a) any training (other than that which a person necessarily acquires in the course of doing his work) shall be taken to be a benefit in kind; but

(b) there shall be left out of account any training provided for the sole or main purpose of improving the worker's ability to perform the work which he has agreed to do.

(4) In this Article -

“associated fund-raising body” means a body of persons the profits of which are applied wholly for the purposes of a charity or voluntary organisation;

“charity” means a body of persons, or the trustees of a trust, established for charitable purposes only;

“receive”, in relation to a monetary payment or a benefit in kind, means receive in respect of, or otherwise in connection with, the employment in question (whether or not under the terms of the employment);

“statutory body” means a body established by or under an enactment;

“subsistence” means such subsistence as is reasonable in the circumstances of the employment in question, and does not include accommodation; and

“voluntary organisation” means a body of persons, or the trustees of a trust, which is established only for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, but which is not a charity.

ARTICLE 41

Prisoners

(1) A prisoner shall not qualify for the minimum wage in respect of any work which he does in pursuance of prison rules.

(2) In this Article -

“prisoner” means a person detained in, or on temporary release from, a prison;

“prison” includes any other institution to which prison rules apply; and

“prison rules” means rules made under Article 26 of the Prison (Jersey) Law 1957.^[6]

ARTICLE 42

Religious and other communities: resident workers

(1) A residential member of a community to which this Article applies shall not qualify for the minimum wage in respect of employment by the community.

(2) Subject to paragraph (3), this Article shall apply to a community if-

(a) it is a charity or is established by a charity;

(b) a purpose of the community is to practise or advance a belief of a religious or similar nature; and

- (c) all or some of its members live together for that purpose.
- (3) This Article shall not apply to a community which -
 - (a) is a non-provided school; or
 - (b) provides a course of higher or vocational education.
- (4) In this Article -
 - (a) “charity” has the same meaning as in Article 40; and
 - (b) “non-provided school”, “higher education” and “vocational education” have the same meaning as in Article 1 of the Education (Jersey) Law 1999.^[7]

Miscellaneous

ARTICLE 43

Application of Part 4 to superior employers

Where -

- (a) the immediate employer of a worker is himself in the employment of some other person; and
- (b) the worker is employed on the premises of that other person,

that other person shall be deemed for the purposes of this Part to be the employer of the worker jointly with the immediate employer.

PART 5

PAYMENT OF WAGES

ARTICLE 44

Wages to be paid in legal tender

Subject to Article 45 wages shall be paid to an employee -

- (a) in legal tender;
- (b) by payment into an account at a bank, being -
 - (i) an account standing in the name of the person to whom the wages are due, or
 - (ii) an account standing in the name of that person jointly with one or more other persons, or
 - (iii) at the express and unsolicited request of the employee, and with written authority, signed by the employee, an account in the name of a third party who shall not be directly or indirectly associated or connected with the employer;
- (c) by payment by postal order;
- (d) by payment by money order; or
- (e) by payment by cheque,

and, subject to the preceding provisions of this Article, shall not be paid in the form of promissory notes, vouchers or coupons or in any other form alleged to represent legal tender.

ARTICLE 45

Partial payment of wages in kind

(1) Subject to the provisions of this Article, nothing in this Part shall prohibit the authorization under a relevant agreement or under any enactment, of the partial payment of wages in the form of allowances in kind in any industry or occupation in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned.

- (2) The partial payment of wages in the form of allowances in kind shall not be lawful unless -
- (a) such allowances are appropriate for the personal use and benefit of the employee and his family; and
 - (b) the value attributed to such allowances is fair and reasonable.

ARTICLE 46

Wages to be paid directly to employees

Except under a relevant agreement, or another enactment, an employer shall pay the wages of an employee in his employment directly to the employee.

ARTICLE 47

Freedom to dispose of wages

An employer shall not limit in any manner the freedom of an employee in his employment to dispose of his wages.

ARTICLE 48

Deductions from wages

Nothing in this Law shall prohibit the deduction from an employee's wages of amounts authorized by or under another enactment or a relevant agreement.

ARTICLE 49

Distrain on wages

Except as may be authorized by or under another enactment, no distraint may be made on wages by virtue of a provisional order issued by the Bailiff or the Judge of the Petty Debts Court, and a distraint on wages may only be made by virtue of a judgment or order of the Royal Court or the Petty Debts Court to the extent to which authority so to do is given by the judgement or order.

ARTICLE 50

Wages to be paid at regular intervals

Except where another enactment or a relevant agreement provides otherwise, an employer shall pay the wages of an employee in his employment on normal working days and at regular intervals of not more than one month.

Pay statements

ARTICLE 51

Itemised pay statement

- (1) An employee shall have the right to be given by his employer, at or before the time at which any payment of wages is made to him, a written itemised pay statement.
- (2) The statement shall contain particulars of -

- (a) the gross amount of the wages;
- (b) the amounts of any variable deductions from that gross amount and the purposes for which they are made;
- (c) the net amount of wages payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

ARTICLE 52

Power to amend provisions about pay and standing statements

The Committee may by Order vary the provisions of Article 51 as to the particulars which are to be included in a pay statement by adding items to, or removing items from, the particulars listed in that Article or by amending any such particulars.

ARTICLE 53

References to the Tribunal

(1) Where an employer does not give an employee a statement as required by Article 51 (either because he gives him no statement or because the statement he gives does not comply with what is required), the employee may refer the matter to the Tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned.

(2) Where -

- (a) a statement purporting to be a pay statement purporting to comply with Article 51, has been given to an employee; and
- (b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Law,

either the employer or the employee may require the question to be referred to and determined by the Tribunal.

(3) For the purposes of this Article a question as to the particulars which ought to have been included in a pay statement shall not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) The Tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless the reference was made -

- (a) before the end of the period of 8 weeks beginning with the date on which the employment ceased; or
- (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 8 weeks.

ARTICLE 54

Determination of references

(1) Where on a reference under Article 53 the Tribunal finds -

- (a) that an employer has failed to give an employee a pay statement in accordance with Article 51; or
- (b) that a pay statement does not, in relation to a deduction, contain the particulars required to be included in that statement by Article 51,

the Tribunal shall make a declaration to that effect, and may order that a pay statement shall be issued in a particular form, or may confirm the particulars as included or referred to in the statement given by the employer, amend those particulars, or

substitute other particulars for them.

(2) Where on a reference in the case of which paragraph (1) applies the Tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of 13 weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the Tribunal may order the employer to pay to the employee a sum not exceeding the aggregate of the unnotified deductions so made.

(3) For the purposes of paragraph (2) a deduction is an unnotified deduction if it is made without the employer giving the employee, in any pay statement, the particulars of the deduction required by Article 51.

ARTICLE 55

Offences

If an employer contravenes any of the provisions of this Part he shall be guilty of an offence and shall be liable, in respect of each offence, to a fine not exceeding level 4 on the standard scale.^[8]

PART 6

TERMINATION OF EMPLOYMENT

ARTICLE 56

Minimum period of notice

(1) Subject to paragraph (9), the notice required to be given by an employer to terminate the employment of an employee shall be not less than -

- (a) one week's notice if the employee has worked for the employer for 8 or more hours a week in any week of his employment and his period of continuous employment is less than 26 weeks;
- (b) 2 weeks' notice if his period of continuous employment is 26 weeks or more but less than 2 years;
- (c) 4 weeks' notice if his period of continuous employment is 2 years or more but less than 5 years;
- (d) 8 weeks' notice if his period of continuous employment is 5 years or more but less than 10 years;
- (e) 12 weeks' notice if his period of continuous employment is 10 years or more but less than 15 years; or
- (f) 16 weeks' notice if his period of continuous employment is 15 years or more.

(2) The notice required to be given by an employee who has been continuously employed for 26 weeks or more to terminate his employment shall be not less than -

- (a) 2 weeks' notice if his period of continuous employment is less than 5 years; or
- (b) 4 weeks' notice if his period of continuous employment is 5 years or more.

(3) Any provision for shorter notice in a relevant agreement with a person who has been continuously employed for four weeks or more shall have effect subject to paragraphs (1) and (2), but this Article shall not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

(4) A contract of employment of a person who has been continuously employed for 13 weeks or more which is a contract for a term certain of 4 weeks or less shall have effect as if it were for an indefinite period; and, accordingly, paragraphs (1), (2) and (3) shall apply to the contract.

(5) Paragraphs (1), (2) and (3) shall not apply to a contract of employment made in contemplation of the performance of a specific task which is not expected to last for more than 13 weeks unless the employee has been continuously employed for a period of more than 3 months.

(6) This Article shall not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

(7) A relevant agreement may specify periods of notice longer than those specified in paragraphs (1) and (2).

(8) The period of continuous employment for the purposes of this Article shall be computed in accordance with Article 57.

(9) An employer shall be under no obligation to give notice under paragraph (1) to an employee who is employed under a fixed term contract of employment.

(10) A person who, being an employer, terminates the employment of a person employed by him without giving the notice specified in this Article shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.
[\[9\]](#)

ARTICLE 57

Computation of period of employment

(1) Except so far as otherwise provided by the following provisions of this Article any week which does not count under paragraphs (2) or (3) shall break the continuity of the period of employment for the purposes of this Law.

(2) Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment for 8 hours or more weekly shall count in computing a period of employment.

(3) Any week in which the employee is, for the whole or part of the week -

(a) incapable of work because of sickness or injury;

(b) absent from work because of a temporary cessation of work; or

(c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for all or any purposes,

shall count as a period of employment despite its not falling within paragraph (2).

(4) If -

(a) a fixed term contract of employment has expired in accordance with its terms; and

(b) another fixed term contract of employment is entered into by the same parties which takes effect not more than 26 weeks after the expiry of the previous fixed term contract of employment,

the interval between the two periods of employment shall not be taken to break the period of employment when computing its length, but the length of the interval shall not be counted in the computation.

(5) A week shall not count under paragraphs (2) to (4) if in that week, or any part of that week, the employee takes part in a strike.

(6) The continuity of an employee's period of employment shall not be broken by a week which does not count under this Article if in that week, or in a part of that week, the employee takes part in a strike.

(7) The continuity of the period of employment shall not be broken by a week which does not count under this Article if, in that week, or in a part of that week, the employee is absent from work because of a lock-out by his employer.

ARTICLE 58

Change of employer

(1) Subject to the provisions of this Article and of Article 59, the provisions of this Part shall relate only to employment by a single employer.

(2) If a trade or business or an undertaking is transferred from one person to another, the period of continuous employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period of employment.

(3) If, on the death of an employer, the employee is taken into the employment of the personal representatives of the deceased, the employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives and the death shall not break the continuity of the period of employment.

(4) If there is a change in the partners or personal representatives who employ any person, the employee's period of employment at the time of the change shall count as a period of employment with the partners or personal representatives after the change, and the change shall not break the continuity of the period of employment.

(5) If an employee of a company is taken into the employment of another company which, at the time when he is taken into its employment is an associated company of the first-mentioned company, his period of employment at that time shall count as a period of employment with the associated company and the change of employer shall not break the continuity of the period of employment.

(6) For the purposes of paragraph (5), a company is associated with another company if it is a subsidiary or a holding company of that other company, or if both companies are subsidiaries of the same holding company.

ARTICLE 59

Rights of employee

(1) The rate of remuneration payable during the period of notice by an employer or recoverable by him where an employee terminates the employment without the requisite notice provided for by this Law shall be that which applied immediately before the notice to terminate the employment was given by the employer or the employee left without giving the requisite notice.

(2) Where bonus payments or gratuities of any kind have been agreed at the time of commencement of an employment as forming part of an employee's remuneration, to be paid at intervals or periods of time, the employee shall be entitled to receive a pro rata payment of such bonus payments and gratuities at the termination of his employment unless -

- (a) such employment has been legitimately terminated by the employer by reason of the conduct of the employee; or
- (b) (i) the employee agreed at the time of commencing the employment that no bonus or gratuity nor any part of such bonus or gratuity would become payable to him until after a specified period of employment had been completed, and
- (ii) the employee terminates the employment before completing the specified period.

ARTICLE 60

Power to amend this Part

The Committee may by Order amend any of the periods of time, whether expressed in hours, weeks or years, mentioned in this Part.

PART 7

UNFAIR DISMISSAL

CHAPTER 1

RIGHT NOT TO BE UNFAIRLY DISMISSED

ARTICLE 61

The right

- (1) An employee shall have the right not to be unfairly dismissed by his employer.
- (2) Paragraph (1) shall have effect subject to the following provisions of this Part.

Dismissal - Loss of unfair dismissal protection

ARTICLE 62

Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2) and Article 63, only if) -

- (a) the contract under which he is employed is terminated by the employer (whether with or without notice);
- (b) he has been employed under a fixed term contract of employment, or a series of fixed term contracts, for less than such continuous period of time as may be prescribed, and the term of the subsisting fixed term contract expires without being renewed under the same contract; or
- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if -

- (a) the employer gives notice to the employee to terminate his contract of employment; and
- (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire,

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

ARTICLE 63

Effective date of termination

(1) Subject to the following provisions of this Article, in this Part "the effective date of termination" -

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires;
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
- (c) in relation to an employee who is employed under a fixed term contract of employment which expires without being renewed under the same contract, means the date on which the term expires.

(2) Where -

- (a) the contract of employment is terminated by the employer; and
- (b) the notice required by Article 56 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination,

for the purposes of Article 73 the later date shall be the effective date of termination.

(3) In paragraph (2)(b) "the material date" means -

- (a) the date when notice of termination was given by the employer; or
- (b) where no notice was given, the date when the contract of employment was terminated by the employer.

- (4) Where -
 - (a) the contract of employment is terminated by the employee;
 - (b) the material date does not fall during a period of notice given by the employer to terminate that contract; and
 - (c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 56 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Article 73 the later date shall be the effective date of termination.

- (5) In paragraph (4) “the material date” means -
 - (a) the date when notice of termination was given by the employee; or
 - (b) where no notice was given, the date when the contract of employment was terminated by the employee.

Fairness

ARTICLE 64

General

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it shall be for the employer to show -
 - (a) the reason (or, if more than one, the principal reason) for the dismissal; and
 - (b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason shall fall within this paragraph if it -
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do;
 - (b) relates to the conduct of the employee;
 - (c) is that the employee was redundant; or
 - (d) is that the employee could not continue to work in the position which he held without contravention, (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) In paragraph (2)(a) -
 - (a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and
 - (b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.
- (4) Where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall -
 - (a) depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
 - (b) be determined in accordance with equity and the substantial merits of the case.

- (5) Paragraph (4) shall be subject to Articles 63 and 65 to 72.

ARTICLE 65

Dismissal on grounds related to union membership or activities

(1) For the purposes of this Part the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee -

- (a) was, or proposed to become, a member of a trade union;
- (b) had taken part, or proposed to take part, in the activities of a trade union at an appropriate time; or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In paragraph (1)(b) “an appropriate time” means -

- (a) a time outside the employee’s working hours; or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union,

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal was -

- (a) the employee’s refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments; or
- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within paragraph (1)(c).

(4) References in this Article to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

ARTICLE 66

Selection for redundancy on grounds related to union membership or activities

Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown -

- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer; and
- (b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one of those specified in Article 65,

the dismissal shall be regarded as unfair for the purposes of this Part.

ARTICLE 67

Leave for family reasons

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if -
- (a) the reason or principal reason for the dismissal is of a prescribed kind; or
 - (b) the dismissal takes place in prescribed circumstances.

(2) A reason or set of circumstances prescribed under this Article shall relate to pregnancy, childbirth or maternity and it may also relate to redundancy or other factors.

(3) A reason or set of circumstances prescribed under paragraph (1) shall satisfy paragraph (3)(c) if it relates to action which an employee -

- (a) takes;
- (b) agrees to take; or
- (c) refuses to take,

under or in respect of a relevant agreement which deals with parental leave.

(4) Orders under this Article may apply any enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this Article.

ARTICLE 68

Assertion of statutory right

(1) Subject to Article 71, an employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee -

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of paragraph (1) -

- (a) whether or not the employee has the right; or
- (b) whether or not the right has been infringed,

but, for that paragraph to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for paragraph (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what was the right claimed to have been infringed.

(4) The following are relevant statutory rights for the purposes of this Article -

- (a) any right conferred by this Law for which the remedy for its infringement is by way of a complaint or reference to the Tribunal; and
- (b) the right conferred by Article 25.

ARTICLE 69

The minimum wage

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the

reason (or, if more than one, the principal reason) for the dismissal is that -

- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee to which this Article applies; or
 - (b) the employer was prosecuted for an offence under Article 34 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or
 - (c) the employee qualifies, or will or might qualify, for the minimum wage or for a particular rate of the minimum wage.
- (2) It shall be immaterial for the purposes of paragraph (1)(a) or (b) -
- (a) whether or not the employee has the right; or
 - (b) whether or not the right has been infringed,

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

- (3) The following are the rights to which this Article applies -
- (a) any right conferred by, or by virtue of, any provision of Part 4 for which the remedy for its infringement is by way of a complaint to the Tribunal; and
 - (b) any right conferred by Article 25.

ARTICLE 70

Redundancy

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if -

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was any one of those specified in -
 - (i) Article 68(1) (read with Article 68(2) and (3), or
 - (ii) Article 69(1) (read with Article 69(2).

ARTICLE 71

Replacements

(1) Where this Article applies to an employee he shall be regarded for the purposes of Article 64(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

- (2) This Article applies to an employee where -
- (a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth; and

- (b) the employer dismisses him in order to make it possible to give work to the other employee.
- (3) This Article also applies to an employee where -
 - (a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds; and
 - (b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.
- (4) Article 64(4) shall not apply in a case to which this Article applies.

ARTICLE 72

Pressure on employer to dismiss unfairly

- (1) This Article shall apply where there falls to be determined for the purposes of this Part a question -
 - (a) as to the reason, or principal reason, for which an employee was dismissed;
 - (b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 64(1)(b); or
 - (c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.
- (2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Exclusion of right

ARTICLE 73

Qualifying period and hours of employment

- (1) Subject to the provisions of paragraphs (2) to (4), Article 61 shall not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than 26 weeks, computed in accordance with Article 57, ending with the effective date of termination.
- (2) Paragraph (1) shall not apply if Article 67(1) or (2), 68(1), 69(1), or 70 applies.
- (3) If an employee is employed under a contract of employment for a fixed term of 26 weeks or less, Article 61 shall not apply to the dismissal of that employee unless at least two-thirds of the fixed term have expired on the effective date of dismissal, and for this purpose parts of a day that have expired shall be rounded up to a whole day.
- (4) Article 61 shall not apply to the dismissal of an employee whose basic contractual hours of employment are less than 8 hours a week.

ARTICLE 74

Upper age limit

- (1) Article 61 shall not apply to the dismissal of an employee if on or before the effective date of termination he has attained -
 - (a) in a case where -
 - (i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and

- (ii) the age was the same whether the employee holding that position was a man or a woman, that normal retiring age;
- (b) in a case where -
 - (i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and
 - (ii) there are different normal retiring ages for men and women, the higher of the two retiring ages; and
- (c) in any other case, pensionable age as defined under the Social Security (Jersey) Law 1974.^[10]
- (2) Paragraph (1) shall not apply if Article 67(1) or (2), 68(1), 69(1), or 70 applies.

ARTICLE 75

Lower age limit

Article 61 shall not apply to the dismissal of an employee unless on the effective date of termination he is no longer of compulsory school age.

CHAPTER 2

REMEDIES FOR UNFAIR DISMISSAL

ARTICLE 76

Complaints to the Tribunal

- (1) Subject to Article 80(2), a complaint may be presented to the Tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to paragraph (3), the Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal -
 - (a) before the end of the period of 8 weeks beginning with the effective date of termination; or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (3) Where a dismissal is with notice, the Tribunal shall consider a complaint under this Article if it is presented after the notice is given but before the effective date of termination.
- (4) In relation to a complaint which is presented as mentioned in paragraph (3), the provisions of this Law, so far as they relate to unfair dismissal, shall have effect as if -
 - (a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
 - (b) references to reinstatement included references to the withdrawal of the notice by the employer;
 - (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice; and
 - (d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

ARTICLE 77

The remedy: compensation

(1) Where, on a complaint under Article 76, the Tribunal finds that the grounds of the complaint are well-founded, the Tribunal shall make an award of compensation in accordance with an Order made under paragraph (2).

(2) The Committee shall by Order specify a scale of compensation which may be awarded by the Tribunal under paragraph (1).

CHAPTER 3

SUPPLEMENTARY

ARTICLE 78

Death of employer or employee

(1) Where -

(a) an employer has given notice to an employee to terminate his contract of employment; and

(b) before that termination the employee or the employer dies,

this Part shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where -

(a) an employee's contract of employment has been terminated;

(b) by virtue of Article 63(2) or (4) a date later than the effective date of termination as defined in paragraph (1) of that Article is to be treated for certain purposes as the effective date of termination; and

(c) the employer or the employee dies before that date,

Article 63(2) or (4) shall apply as if the notice referred to in that paragraph as required by Article 56 expired on the date of the death.

(3) Where an employee has died, if the Tribunal finds that the grounds of the complaint are well-founded, the case shall be treated as falling within Article 77.

PART 8

CONTRACTING OUT ETC. AND REMEDIES

ARTICLE 79

Restrictions on contracting out

(1) A provision in a contract (whether a relevant agreement or not) shall be void in so far as it purports -

(a) to exclude or limit the operation of any provision of this Law; or

(b) to preclude a person from bringing any proceedings under this Law before the Tribunal,

except as permitted by this Law.

(2) Paragraph (1) shall not apply to an agreement to refrain from instituting or continuing proceedings before the Tribunal where a conciliation officer has taken action under Article 4 of the Jersey Advisory and Conciliation (Jersey) Law 200-^[11] or if the conditions regulating compromise agreements under this Law are satisfied in relation to the agreement.

- (3) For the purposes of paragraph (2) the conditions regulating compromise agreements under this Law are that -
- (a) the agreement must be in writing;
 - (b) the agreement must relate to the particular proceedings;
 - (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before the Tribunal;
 - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
 - (e) the agreement must identify the adviser; and
 - (f) the agreement must state that the conditions regulating compromise agreements under this Law are satisfied.
- (4) A person is a relevant independent adviser for the purposes of paragraph (3)(c) -
- (a) if he is a qualified lawyer;
 - (b) if he is an officer, official, employee or member of a trade union who has been certified in writing by the trade union as competent to give advice and as authorized to do so on behalf of the trade union;
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorized to do so on behalf of the centre; or
 - (d) if he is a person of a description specified in an Order made by the Committee.
- (5) A person shall not be a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the employee -
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer;
 - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer;
 - (c) in the case of a person within paragraph (4)(c), if the employee makes a payment for the advice received from him; or
 - (d) in the case of a person of a description specified in an Order under paragraph (4)(d), if any condition specified in the Order in relation to the giving of advice by persons of that description is not satisfied.
- (6) In paragraph (4)(a) “qualified Lawyer” means a solicitor or advocate who is entitled to practise as such under Article 2 of the Advocates and Solicitors (Jersey) Law 1997.^[12]
- (7) For the purposes of this Article any two employers shall be treated as associated if -
- (a) one is a company of which the other (directly or indirectly) has control; or
 - (b) both are companies of which a third person (directly or indirectly) has control,
- and “associated employer” shall be construed accordingly.

ARTICLE 80

Remedy for infringement of rights under this Law and under contracts of employment

(1) Subject to Article 76, an employer or an employee may bring proceedings for infringement of any of the rights conferred by this Law by way of complaint or reference to the Tribunal, and Article 86 shall apply to any such reference or complaint.

(2) Nothing in this Law shall prevent an employer or an employee from bringing proceedings in the courts for breach of a contract of employment.

PART 9

THE TRIBUNAL

ARTICLE 81

Establishment of the Tribunal

- (1) There is established a Tribunal to be known as the Jersey Employment Tribunal.
- (2) The Tribunal shall exercise the jurisdiction conferred on it by or under this or any other Law.

ARTICLE 82

Constitution, membership and administration of the Tribunal

- (1) The States may by Regulations provide for the constitution, membership and administration of the Tribunal.
- (2) Regulations made under paragraph (1) may provide for -
 - (a) the appointment of the Chairman of the Tribunal;
 - (b) the appointment of members of the Tribunal;
 - (c) the terms of membership of the Tribunal;
 - (d) the composition of the body of members to hear applications to the Tribunal;
 - (e) the remuneration and reimbursement of expenses of members of the Tribunal; and
 - (f) such matters as may be necessary or convenient for the administration of the Tribunal.

ARTICLE 83

Limitation of civil liability

A member of the Tribunal shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

ARTICLE 84

Declaration of interests, etc.

(1) If a member of the Tribunal has a personal or pecuniary interest, direct or indirect, in a matter which is the subject of an application or reference to a Tribunal on which he is sitting, he shall, as soon as practicable after the commencement of the hearing of the application or reference or after the disclosure of the matter in which he has such an interest, disclose the fact and shall not take any further part in the hearing or in the decision reached as the result of the hearing.

(2) A person who fails to comply with the provisions of paragraph (1) shall be guilty of an offence and liable on conviction to a fine not exceeding level 4 on the standard scale.^[13]

(3) Paragraph (1) shall not apply to an interest in a matter which a member of the Tribunal has as a member of the public.

(4) Where a member of the Tribunal has an indirect pecuniary interest in a matter by reason only of a beneficial interest in the securities of a company or other body and the nominal value of those securities does not exceed one thousandth

of the total nominal value of the issued share capital of the company or the body, paragraph (1) shall not prohibit him from taking part in the hearing and the reaching of the decision as the result of the hearing.

ARTICLE 85

Appointment of secretary and staff

(1) The Committee shall appoint or designate a person nominated by the Tribunal to act as Secretary of the Tribunal and shall appoint, designate or contract for the provision of such other staff as it shall determine are necessary for the administration of the Tribunal.

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

(3) If the persons appointed or designated under paragraph (1) are not public officers, the Committee shall make such arrangements as it considers necessary for the payment of pensions and associated benefits to the persons appointed or designated and their dependants.

ARTICLE 86

Jurisdiction

(1) Proceedings may be brought before the Tribunal in respect of an employment dispute to which this Article applies by any party to the dispute, whether or not it has been the subject of conciliation by JACS.

(2) Proceedings may be referred to the Tribunal in respect of an employment dispute to which this Article applies by JACS, a conciliation officer designated by JACS as such under Article 5 of the Jersey Advisory and Conciliation (Jersey) Law 200-,^[14] or by a person appointed by JACS under Article 4 of that Law to offer assistance to the parties.

(3) This Article shall apply to an individual employment dispute which involves a claim in respect of which a court in the Island would under the law for the time being in force have jurisdiction, except an employment dispute which -

- (a) has been the subject of an award after arbitration in accordance with Article 6 of the Jersey Advisory and Conciliation (Jersey) Law 200-;¹⁴
- (b) includes a claim for damages for personal injuries; or
- (c) includes a claim for breach of a contractual term -
 - (i) requiring the employer to provide living accommodation for the employee,
 - (ii) imposing an obligation on the employer or the employee in connection with living accommodation,
 - (iii) relating to intellectual property,
 - (iv) imposing an obligation of confidence, or
 - (v) which is a covenant in restraint of trade.

(4) This Article shall apply to a collective employment dispute, except a collective employment dispute which has been the subject of an award after arbitration in accordance with Article 6 of the Jersey Advisory and Conciliation (Jersey) Law 200-,¹⁴ where -

- (a) in any trade or industry terms and conditions of employment are established which have been settled by machinery of negotiation or arbitration to which the parties are organisations of employers and of workers representative respectively of substantial proportions of the employers and workers engaged in that trade or industry (hereinafter referred to as “recognized terms and conditions”); and
 - (b) the dispute is as to whether an employer should observe the recognized terms and conditions.
- (5) Subject to paragraphs (3) and (4), this Article shall apply to such individual or collective employment

disputes as may be provided by this Law or any other enactment.

(6) Subject to Article 87 the Tribunal shall not in any proceedings order the payment to an individual of an amount exceeding such sum as may be prescribed from time to time.

ARTICLE 87

Regulations

The States may by Regulations -

- (a) provide that proceedings in respect of a claim, other than proceedings which may be brought in accordance with Article 86, may be brought before the Tribunal; and
- (b) impose exceptions, conditions and reservations in respect of proceedings which may be brought before the Tribunal under this Law.

ARTICLE 88

Awards

(1) Where proceedings in respect of an employment dispute have been brought before, or referred to, the Tribunal and the Tribunal is of opinion that there are recognized terms and conditions applicable to the case and that the employer or the employee concerned is not observing -

- (a) those terms and conditions; or
- (b) terms and conditions of employment which, in the opinion of the Tribunal, are not less favourable to the employee than those terms and conditions,

it may by its award require the employer or the employee to observe the recognized terms and conditions or such terms and conditions of employment as may be determined by it to be not less favourable to the employee than the recognized terms and conditions.

(2) Where an award has been made by the Tribunal, as from the date of the award or from such other date as the Tribunal may direct, not being earlier than the date on which the employment dispute to which the award relates first arose, it shall be a term of the contract between the employer and the worker or workers to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award until varied by subsequent agreement between the parties or by a subsequent award of the Tribunal, or until different terms and conditions of employment in respect of the worker or workers concerned are settled through the machinery of negotiation or arbitration for the settlement of terms and conditions of employment in the trade or industry or the undertaking in which the worker or those workers are employed.

- (3) Where -
 - (a) proceedings in respect of an individual employment dispute have been brought before, or referred to, the Tribunal;
 - (b) the dispute is in relation to money which may be due to be paid under the terms of a contract of employment entered into between the parties; and
 - (c) the Tribunal determines that a sum of money is due to one party from the other,

the Tribunal may by its award require that sum of money to be paid.

(4) Where proceedings in respect of an individual or a collective employment dispute, or proceedings for infringement of any of the rights conferred by this Law, have been brought before, or referred to, the Tribunal, the Tribunal may by its award require any person to take, or refrain from taking, any action specified in the award.

ARTICLE 89

Procedure

(1) The Tribunal shall have, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in the Royal Court and, without limiting the generality of the preceding provisions of this Article, may -

- (a) issue a summons to any person (including a party to the proceedings) requiring him to appear at the time and place mentioned therein to testify to all matters within his knowledge relative to the subject or proceedings before the Tribunal, and to bring with him and produce any document, book or papers that he has in his possession or under his control relative to such subject;
- (b) administer oaths and examine any person on oath, affirmation or otherwise; and
- (c) require a party in writing to furnish to the Tribunal a written answer to any question if it considers -
 - (i) that answer of the party to that question may help to clarify any issue likely to arise for determination in the proceedings, and
 - (ii) that it would be likely to assist the progress of the proceedings for that answer to be available to the Tribunal before the hearing,

and may appoint the time within which the answer is to be furnished.

- (2) In this Article “document” includes information held in electronic form.

ARTICLE 90

Publicity

- (1) Subject to paragraph (2) the Tribunal shall sit in public.

(2) Despite paragraph (1) the Tribunal may sit in private for the purposes of hearing evidence from any person which in the opinion of the Tribunal is likely to consist of -

- (a) information which he could not disclose without contravening a prohibition imposed by or under any enactment;
- (b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information, the disclosure of which would cause substantial injury to any undertaking of his, or any undertaking in which he works, for reasons other than its effect on negotiations with respect to the terms of employment, or the conditions of labour, of the persons in the employment of the undertaking in question.

(3) In any case which involves allegations of sexual misconduct the Tribunal may at any time before it issues its decision, either on the application of a party or of its own motion make a restricted reporting order prohibiting the publication on the Island of identifying matter in a written publication available to the public or in a programme broadcast on the Island by television, radio or any other telecommunications or internet service.

(4) When the Tribunal makes an order under paragraph (3) and that case is being dealt with together with any other proceedings, the Tribunal may direct that the order shall apply also in relation to those other proceedings or such part of them as the Tribunal may direct.

(5) The Tribunal shall not make an order under paragraph (3) unless it has given each party an opportunity to advance either written or oral argument.

- (6) The Tribunal may revoke an order under paragraph (3) at any time.

- (7) If any identifying matter is published in contravention of an order under paragraph (3) -

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of publication in any other written form, the person publishing the matter; and
- (c) in the case of matter published in a broadcast programme -
 - (i) any body corporate engaged in providing the service in which the programme is included, and
 - (ii) any persons having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on conviction to a fine.

(8) Where a person is charged with an offence under paragraph (7) it shall be a defence to prove that at the time of the alleged offence he was not aware and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.

(9) Where an offence under paragraph (7) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person purporting to act in any such capacity,

he, as well the body corporate, is guilty of the offence and liable to be proceeded against and prosecuted accordingly.

(10) In relation to a body corporate whose affairs are managed by its members, “director”, in paragraph (9), means a member of the body corporate.

(11) In this Article -

“identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as a party to, the case in question;

“sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct, of whatever nature, related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed; and

“sexual offence” means -

- (a) rape;
- (b) incest;
- (c) sodomy;
- (d) indecent assault;
- (e) procuring an act of gross indecency;
- (f) any offence under the Loi (1895) modifiant le droit criminel,^[15] other than an offence under Article 9 of that Law;^[16]
- (g) any offence under Article 45 of the Mental Health (Jersey) Law 1969;^[17]
- (h) any offence of attempting to commit any of the offences in sub-paragraphs (a) to (g);
- (i) any offence of conspiracy or incitement to commit any of the offences in sub-paragraphs (a) to (g); or

- (j) any offence of aiding, abetting, counselling or procuring any of the offences in sub-paragraphs (a) to (i).

ARTICLE 91

Conduct of hearings

- (1) A person may appear before the Tribunal in person or be represented by any person whom he wishes to represent him.
- (2) Part II of the Arbitration (Jersey) Law 1998^[18] shall not apply to any proceedings before the Tribunal.
- (3) The Committee may by Order make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.
- (4) Orders made under paragraph (3) may, in particular, include provision-
- (a) for the reference of employment disputes to the Tribunal;
 - (b) for the manner in which and the time within which proceedings may be brought before the Tribunal;
 - (c) for the service of documents in relation to proceedings brought before the Tribunal;
 - (d) for the hearing, investigation and determination of employment disputes by the Tribunal;
 - (e) for the manner in which proceedings in respect of a claim which has been brought before the Tribunal may be disposed of;
 - (f) for the appointment of an assessor for the purposes of assisting proceedings before the Tribunal;
 - (g) for the award of costs or expenses; and
 - (h) for the registration and proof of decisions orders and awards of the Tribunal.

ARTICLE 92

Expenses

All expenses incurred in the administration of this Part shall, subject to the provisions of any Regulations made under Article 87, be defrayed out of the income of the States.

ARTICLE 93

Enforcement

- (1) A sum payable in pursuance of a decision of the Tribunal shall be recoverable by action before the court on application made on behalf of the Tribunal.
- (2) An order of the Tribunal to take any action or to refrain from taking any action, may be enforced on application to the court made on behalf of the Tribunal.

ARTICLE 94

Offences

- (1) A person who without reasonable excuse -
- (a) in proceedings before the Tribunal -
 - (i) makes a statement which he knows or believes to be false, misleading or deceptive in a material particular,

- (ii) recklessly makes a statement which is false, misleading or deceptive in a material particular, or
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or believes to be false, misleading or deceptive in a material particular;
- (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend;
- (c) on attending before the Tribunal as a witness, fails, when legally required to do so -
 - (i) to take the oath or affirmation,
 - (ii) to produce any document in his possession, custody or power, or
 - (iii) subject to paragraph (2), to answer any question put to him; or
- (d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court,

shall be guilty of an offence, and shall be liable on conviction to a fine or to imprisonment for a term not exceeding 2 years, or to both.

(2) A person giving evidence to the Tribunal shall not be compellable to answer any question tending to incriminate himself.

(3) In this Article “document” includes information held in electronic form.

PART 10

MISCELLANEOUS

ARTICLE 95

Appointment of officers

- (1) The Committee -
 - (a) may appoint officers to act for the purposes of this Law; and
 - (b) may, instead of or in addition to appointing any officers under this Article, arrange with any other Committee or administration of the States, or any body performing functions on behalf of the States, that officers of that Committee, administration or body shall act for those purposes.

(2) When acting for the purposes of this Law, an officer shall, if so required, produce some duly authenticated document showing his authority so to act.

(3) If it appears to an officer that any person with whom he is dealing while acting for the purposes of this Law does not know that he is an officer so acting, the officer shall identify himself as such to that person.

ARTICLE 96

Powers of officers

- (1) An officer acting for the purposes of this Law shall have power for the performance of his duties -
 - (a) to require the production by a relevant person of any records required to be kept and preserved in accordance with this law or Regulations made under this Law and to inspect and examine those records and to copy any material part of them;
 - (b) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of any such records;

- (c) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Law, or any notice under this Law, is being or has been complied with; and
- (d) at all reasonable times to enter any relevant premises in order to exercise any power conferred on the officer by sub-paragraphs (a) to (c).

(2) No person shall be required under paragraph (1)(b) or (c) to answer any question or furnish any information which might incriminate the person or, if married, the person's spouse.

(3) The powers conferred by paragraph (1) shall include power, on reasonable written notice, to require a relevant person -

- (a) to produce any such records as are mentioned in paragraph (1)(a) to an officer at such time and place as may be specified in the notice; or
- (b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in paragraph (1)(b) or (c).

(4) In this Article "relevant person" means any person whom an officer acting for the purposes of this Law has reasonable cause to believe to be -

- (a) the employer or former employer of a worker;
- (b) a person who for the purposes of Article 35 is the agent or the principal;
- (c) a person who supplies work to an individual who qualifies for the minimum wage;
- (d) a worker, servant or agent of a person falling within paragraph (a), (b) or (c); or
- (e) a person who qualifies for the minimum wage.

(5) In this Article "relevant premises" means any premises which an officer acting for the purposes of this Law has reasonable cause to believe to be -

- (a) premises at which an employer carries on business;
- (b) premises which an employer uses in connection with his business (including any place used, in connection with that business, for giving out work to home workers, within the meaning of Article 36); or
- (c) premises of a person who for the purposes of Article 35 is the agent or the principal.

(6) A person who -

- (a) wilfully delays or obstructs an officer acting for the purpose of this Law in the exercise of any power under this Law; or
- (b) refuses or neglects -
 - (i) to answer any question or to furnish any information,
 - (ii) to furnish any information, or
 - (iii) to produce any document (including a document held in electronic form),
 when required to do so under this Article,

shall be guilty of an offence and liable to a term of imprisonment not exceeding 2 years, or a fine, or both.

Transfer of information

(1) Information obtained by the Comptroller of Income Tax or by a person appointed under Article 8 of the Income Tax (Jersey) Law 1961^[19] in the course of carrying out a function of the Comptroller of Income Tax under that Law as amended or Regulations made under that Law may, with the approval of the Finance and Economics Committee be supplied by the Comptroller of Income Tax to an officer appointed or acting under Article 95, or to the Attorney-General, for the purposes of preventing, detecting, or bringing a prosecution in respect of an offence under this Law.

(2) Information obtained by an officer of the Employment and Social Security Committee who is authorized under Article 33 of the Social Security (Jersey) Law 1974^[20] in the course of carrying out his functions or duties under that Law may be supplied by him to an officer appointed or acting under Article 95, or to the Attorney-General, for the purposes of preventing, detecting, or bringing a prosecution in respect of an offence under this Law.

ARTICLE 98

Information obtained by officers

(1) This Article shall apply to any information obtained by an officer acting for the purposes of this Law, whether by virtue of Article 96(1)(a) or (b).

(2) Information to which this Article applies vests in the Committee.

(3) Information to which this Article applies may be used for any purpose relating to this Law by -

(a) the Committee; or

(b) any relevant authority whose officer obtained the information.

(4) Information to which this Article applies -

(a) may be supplied by, or with the authorization of, the Committee to any relevant authority for any purpose relating to this Law; and

(b) may be used by the recipient for any purpose relating to this Law.

(5) Information supplied under paragraph (4) -

(a) shall not be supplied by the recipient to any other person or body unless it is supplied for the purposes of any civil or criminal proceedings relating to this Law; and

(b) shall not be supplied in those circumstances without the authorization of the Committee.

(6) This Article shall not limit the circumstances in which information may be supplied or used apart from this Article.

(7) Paragraph (2) shall not affect the title or rights of -

(a) any person whose property the information was immediately before it was obtained as mentioned in paragraph (1); or

(b) any person claiming title or rights through or under such a person otherwise than by virtue of any power conferred by or under this Law.

(8) In this Article “relevant authority” means any Committee or administration of the States or other body which is party to arrangements made with the Committee which are in force under Article 95(1)(b).

ARTICLE 99

Publicity

(1) The Committee shall arrange for information about this Law and Regulations and Orders under it to be published by such means as appear to the Committee to be most appropriate for drawing the provisions of this Law and those Regulations and Orders to the attention of persons affected by them.

(2) The information required to be published under paragraph (1) includes, in particular, information about-

- (a) the hourly rate for the time being prescribed under Article 15;
- (b) the method or methods to be used for determining under Article 16 the hourly rate at which a person is to be regarded for the purposes of this Law as remunerated by his employer in respect of his work in any pay reference period;
- (c) the methods of enforcing rights under this Law; and
- (d) the persons to whom Article 17 applies and the provision made in relation to them by Regulations under that Article.

ARTICLE 100

Offences by bodies corporate

(1) Where an offence under this Law, which has been committed by a limited liability partnership or a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in any such capacity,

he, as well as the partnership or body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

ARTICLE 101

Regulations and Orders

(1) The Committee may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed or provided for under this Law by Order of that Committee.

(2) The Committee may by Order make provision for this Law to apply, with or without modifications, or to cease to apply to a prescribed class or classes of individuals either as employers or employees.

(3) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be specified or provided for under this Law by Regulations.

(4) Except to the extent that this Law makes provision to the contrary, an Order or Regulations made under this Law may -

- (a) make different provision in relation to different cases, circumstances or descriptions of person;
- (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; and
- (c) make transitional, consequential, incidental or supplementary provisions and savings.

- (5) Paragraph 4(a) shall not have effect in relation to Orders under Article 15(3).
- (6) Regulations made under this Law may create an offence punishable by a fine not exceeding level 5 on the standard scale.^[21]
- (7) Regulations made under this Law may contain provisions modifying any enactment in consequence of the enactment of this Law.
- (8) The Subordinate Legislation (Jersey) Law 1960^[22] shall apply to Orders made under this Law.

ARTICLE 102

Consequential provisions

- (1) In the Maintenance Orders (Enforcement) (Jersey) Law 1999,^[23] in the definition of “wages” in Article 1, for the words “Payment of Wages (Jersey) Law 1962”^[24] there shall be substituted “Employment (Jersey) Law 200-”^[25].
- (2) References in paragraphs 12 and 44 of the Schedule to the Broadcasting Act 1981 (Channel Islands) Order 1987 to the Industrial Disputes Officer appointed under the Industrial Disputes (Jersey) Law 1956 as amended from time to time shall be construed as references to JACS.

ARTICLE 103

Repeals

The enactments specified in Schedule 3 are repealed.

ARTICLE 104

Transitional provisions and savings

Schedule 4 shall have effect.

ARTICLE 105

Citation and commencement

This Law may be cited as the Employment (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint, and different days may be appointed for different purposes or different provisions of this Law.

SCHEDULE 1

(Article 12)

A WEEK'S PAY

General

1. (1) This paragraph and paragraphs 2 and 3 shall apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to paragraph 2, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay shall be the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

(3) Subject to paragraph 2, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week's pay shall be the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 52 weeks ending -

(a) where the calculation date is the last day of a week, with that week; and

(b) otherwise, with the last complete week before the calculation date.

(4) In this paragraph references to remuneration varying with the amount of work done shall not include remuneration which may include any commission or similar payment which varies in amount.

Remuneration varying according to time of work

2. (1) This paragraph shall apply if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.

(2) The amount of a week's pay shall be the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.

(3) For the purposes of subparagraph (2) -

(a) the average number of weekly hours shall be calculated by dividing by 52 the total number of the employee's normal working hours during the relevant period of 52 weeks; and

(b) the average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of 52 weeks.

(4) In subparagraph (3) "the relevant period of 52 weeks" shall mean the period of 52 weeks ending -

(a) where the calculation date is the last day of a week, with that week; and

(b) otherwise, with the last complete week before the calculation date.

Supplementary

3. (1) For the purposes of paragraphs 1 and 2, in arriving at the average hourly rate of remuneration, only -

(a) the hours when the employee was working; and

(b) the remuneration payable for, or apportionable to, those hours,

shall be brought in.

(2) If for any of the 52 weeks mentioned in paragraphs 1 and 2 no remuneration within subparagraph (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to 52 the number of weeks of which account is taken.

(3) Where -

- (a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours; and
- (b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within paragraph 4(3), in normal working hours falling within the number of hours without overtime),

account shall be taken of that remuneration as if the work had been done in normal working hours (or, in a case within paragraph 4(3), in normal working hours falling within the number of hours without overtime) and the amount of that remuneration had been reduced accordingly.

Employments with no normal working hours

4. (1) This paragraph shall apply where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of 52 weeks ending -

- (a) where the calculation date is the last day of a week, with that week; and
- (b) otherwise, with the last complete week before the calculation date.

(3) In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to 52 the number of weeks of which account is taken.

The calculation date

5. The calculation date for the purposes of this Schedule shall be the first day of the period of leave in question.

New employments and other special cases.

6. (1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Schedule, the amount of a week's pay shall be the amount which fairly represents a week's pay.

(2) In determining that amount the employer -

- (a) shall apply as nearly as may be the preceding provisions of this Schedule; and
- (b) shall have regard to the amount of the remuneration received by the employee in respect of the employment in question.

Continuous employment

7. In arriving at average weekly remuneration under this Schedule, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of the provisions of any contract or enactment, a period of employment with a former employer counts as part of the employee's continuous period of employment.

The minimum wage

8. If the calculation of the pay of an employee in accordance with the foregoing provisions of this Schedule results in a rate which is lower than the minimum wage the amount of a week's pay for that employee shall be at the rate of the

minimum wage.

SCHEDULE 2

(Article 20(10))

THE EMPLOYMENT FORUM

Membership

1. (1) The Employment Forum appointed under Article 21(9) (in this Schedule referred to as “the Forum”) shall consist of a chairman and 8 other members appointed by the States.

(2) In appointing members, the States shall have regard to the desirability of securing that there is such a balance as the States considers appropriate between -

- (a) members with knowledge or experience of, or interest in, trade unions or matters relating to workers generally;
- (b) members with knowledge or experience of, or interest in, employers’ associations or matters relating to employers generally; and
- (c) members with other relevant knowledge or experience.

(3) Members shall hold and vacate office in accordance with their terms of appointment, subject to the provisions contained in sub-paragraphs (4) to (6).

(4) A member may resign his membership by giving notice to the Committee.

(5) A person who ceases to be a member shall be eligible for re-appointment.

(6) The Committee shall by notice to the member concerned remove from office a member who -

- (a) has become bankrupt, has made an arrangement with his creditors, has had his estate sequestrated, has granted a trust deed for his creditors or has made a composition contract with his creditors;
- (b) has been absent from two or more consecutive meetings of the Forum otherwise than for a reason approved by them; or
- (c) is in the opinion of the Committee unable or unfit to perform his duties as member.

Financial provisions

2. The Committee may pay the members of the Forum such remuneration, and such reimbursement in respect of travel or other expenses properly incurred by them, or in respect of loss of remuneration sustained by them, in the performance of their duties, as the Committee may determine.

Staff, facilities and money

3. The Committee shall provide the Forum with -

- (a) such staff;
- (b) such accommodation, equipment and other facilities; and
- (c) such sums,

as the Committee may reasonably determine are required by the Forum for carrying out their duties in preparing any report on matters referred to them under this Law.

Proceedings

4. (1) The quorum of the Forum and the arrangements relating to their meetings shall be such as the Forum may

determine.

- (2) The validity of proceedings of the Forum shall not be affected by -
 - (a) any vacancy among the members, whether occurring by reason of death, resignation or otherwise;
 - (b) the appointment of a member at any time to fill such a vacancy; or
 - (c) any defect in the appointment of a member.

SCHEDULE 3

(Article 103)

REPEALS

The Industrial Disputes (Jersey) Law 1956^[26]

The Industrial Disputes (Amendment) (Jersey) Law 1959^[27]

The Payment of Wages (Jersey) Law 1962^[28]

The Payment of Wages (Amendment) (Jersey) Law 1977^[29]

The Payment of Wages (Amendment No. 2) (Jersey) Law 1982^[30]

The Payment of Wages (Amendment No. 3) (Jersey) Law 1998^[31]

The Termination of Employment - Minimum Periods of Notice (Jersey) Law 1974^[32]

The Terms of Employment (Jersey) Regulations 2001^[33]

SCHEDULE 4

(Article 104)

TRANSITIONAL PROVISIONS AND SAVINGS

1. If immediately before this Law comes into force a dispute has been reported to the Industrial Disputes Officer under Article 4 of the Industrial Disputes (Jersey) Law 1956,^[34] or an issue has been reported under Article 5 of that Law,^[35] and (in the event of a dispute the Industrial Disputes Officer has not referred the dispute to the Industrial Disputes Tribunal under Article 10, the Industrial Disputes Officer shall on the coming into force of this Law refer the dispute or issue to JACS who shall deal with it in all respects as though JACS had been requested to offer assistance to the parties to the dispute or issue.
2. If immediately before this Law comes into force a dispute has been referred under Article 10 of the Industrial Disputes (Jersey) Law 1956^[36] to the Industrial Disputes Tribunal, that Tribunal shall remain constituted and empowered, and the dispute shall be dealt with and any award enforced, in all respects as if this Law had not come into force, and all the expenses incurred in the administration of this paragraph shall be defrayed out of the general income of the States.
3. If immediately before this Law comes into force the Industrial Disputes Officer has referred to the Industrial Disputes Tribunal for advice under Article 14 of the Industrial Disputes (Jersey) Law 1956,^[37] that Tribunal shall pass the request for advice to JACS who shall deal with the matter in all respects as though JACS had been requested to offer assistance to the parties to the dispute or issue.
4. The substitution of this Law for the provisions repealed or revoked by this Law does not affect the continuity of the law.
5. (1) Anything done, or having effect as done, (including the making of subordinate legislation) under or for the purposes of any provision repealed or revoked by this Law shall have effect as if done under or for the purposes of any corresponding provision of this Law.
(2) Sub-paragraph (1) shall not apply to the making of any subordinate legislation to the extent that it is reproduced in this Law.
6. Any reference (express or implied) in this Law or any other enactment, or in any instrument or document, to a provision of this Law shall (so far as the context permits) be read as (according to the context) being or including in relation to times, circumstances and purposes before the commencement of this Law a reference to the corresponding provision repealed or revoked by this Law.
7. Any reference (express or implied) in any enactment, or in any instrument or document, to a provision repealed or revoked by this Law shall (so far as the context permits) be read as (according to the context) being or including in relation to times, circumstances and purposes after the commencement of this Law a reference to the corresponding provision of this Law.
8. (1) Any Order made, or other thing done, by any person under any provision of any enactment that is repealed by this Law that still had force or effect immediately before the repeal of that provision by this Law shall, if there is a provision that gives power to do that thing under this Law, be taken to have been done under the latter provision and by the person who has, under the latter provision, the function of doing that thing.
(2) Sub-paragraph (1) is subject to any express provision, or implication, to the contrary in this Law or in Regulations made under this Law.
9. (1) Regulations made under this Law may contain provisions of a saving or transitional nature consequent on the enactment of this Law or on the enactment and registration of any other Law, and (without affecting the generality of the preceding words) on the taking up of functions by the Tribunal.
(2) Regulations made under this Law may contain provisions modifying any enactment in consequence of the enactment of this Law.
(3) Any provision referred to in sub-paragraph (1) or (2) may, if the Regulations so provide, come into force on

the day on which this Schedule comes into force or on a later day.

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- [1] Fair Play in the Workplace - good employment practice in Jersey and Fair Play in the Workplace - Trade Union Issues.
- [2] P.134/2002.
- [3] Volume 1992-1993, page 437.
- [4] Tome VIII, page 9.
- [5] Volume 1992-1993, page 437.
- [6] Tome VIII, page 671 and Volume 1994-1995, page 67.
- [7] Volume 1999, pages 446 and 448.
- [8] Volume 1992-1993, page 437.
- [9] Volume 1992-1993, page 437.
- [10] Volume 1973-1974, page 319, Volume 1982-1983, pages 51, 53 and 239, Volume 1986-1987, pages 149 and 151, Volume 1990-1991, pages 467 and 1117, Volume 1992-1993, pages 433 and 437, Volume 1994-1995, page 423, Volume 1996-1997, pages 7 and 1063, Volume 1998, page 722, Volume 1999, pages 419 and 515, Volume 2000, page 873 and R & O 640, 7666, 8602 and 9112.
- [11] P.134/2002.
- [12] Volume 1996-1997, page 571.
- [13] Volume 1992-1993, page 437.
- [14] P.134/2002.
- [15] Tomes IV-VI, pages 132 and 352, Volume 1961-1962, page 95, Volume 1968-1969, page 340 and Volume 1996-1997, page 1053.
- [16] Tomes IV-VI, page 138.
- [17] Volume 1968-1969, page 394.
- [18] Volume 1998, page 447 and Volume 1999, page 521.
- [19] Volume 1961-1962, page 201.
- [20] Volume 1973-1974, page 343 and Volume 2000, page 887.
- [21] Volume 1992-1993, page 437.
- [22] Tome VIII, page 849 and Volume 2001, pages 3 and 4.
- [23] Volume 1999, page 8.
- [24] Volume 1961-1962, page 485, Volume 1975-1978, page 259, Volume 1982-1983, page 7 and Volume 1998, page 303.
- [25] P.187/2002.
- [26] Tome VIII, page 643.
- [27] Incorporated in Tome VIII, page 643.
- [28] Volume 1961-1962, page 485.
- [29] Volume 1975-1978, page 259.
- [30] Volume 1982-1983, page 7.
- [31] Volume 1998, page 303.
- [32] Volume 1973-1974, page 213.
- [33] R & O 32/2001.
- [34] Tome VIII, page 645.
- [35] Tome VIII, page 646.
- [36] Tome VIII, page 647.

