

STATES OF JERSEY



DRAFT EMPLOYMENT TRIBUNAL (JERSEY) REGULATIONS 200-

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

STATES GREFFE



Jersey

DRAFT EMPLOYMENT TRIBUNAL (JERSEY) REGULATIONS 200-

REPORT

The Employment (Jersey) Law 2003 provided for the establishment of an Employment Tribunal, with jurisdiction over both individual and collective disputes. The Law requires Regulations on the constitution, membership and administration of the Tribunal.

The draft Regulations provide for the setting up of a Tribunal with a legally qualified Chairman and Deputy Chairman and a pool of members with employer and employee experience. The Chairman may direct a dispute to be heard by either the Chairman or Deputy Chairman sitting alone, or a Tribunal consisting of the Chairman or Deputy Chairman and 2 other members, one of each from those with employer and employee experience, for cases of more complex or contentious nature and all collective disputes.

The Regulations allow members of the Tribunal to hold office for 2 terms each not exceeding 5 years. Initially appointments will be staggered to ensure that the terms of all those appointed do not expire on the same day. The Regulations also provide for the termination of office which may either be on resigning or other reasons, such as bankruptcy or misconduct.

In considering remuneration of members of the Tribunal, the Committee decided to align remuneration of the Chairman to the rate paid to Commissioners of the Royal Court, the Deputy Chairman receiving half that rate.

Financial and Manpower Statement

A budget of £113,500 has already been allocated to the Tribunal for 2005. As the Tribunal will be independent, its administration will not require any additional manpower in the Department.

The Committee believes that these Regulations will provide for the establishment of a Tribunal with the right balance of professionalism and experience in the matter of individual and collective employment disputes.

Explanatory Note

These Regulations provide for the composition of the Jersey Employment Tribunal, the terms of appointment of its members, their remuneration and the Tribunal's sittings.

Regulation 1 defines words used in the Regulations.

Regulation 2 provides that the Tribunal shall consist of a panel comprising the following members –

- (a) a Chairman, who must hold a legal qualification,
- (b) a Deputy Chairman, who must also be legally qualified,
- (c) not fewer than 2 or more than 6 persons with knowledge or experience of or interest in trade unions or matters relating to employees generally and
- (d) not fewer than 2 or more than 6 persons with knowledge or experience of or interest in employers' associations or matters relating to employers generally.

Regulation 3 provides for the members of the Tribunal to be appointed by the States on the recommendation of the Jersey Appointments Commission. Before making its recommendations, the Commission must consult the Employment and Social Security Committee.

Regulation 4 provides that a member's term of office shall be for a period, not exceeding 5 years, to be specified in his or her appointment. However, if the member so wishes, he or she is entitled to an extension of the term for a further period of his or her choice, not exceeding 5 years.

Regulation 5 allows a member to resign at any time. It also provides for the other circumstances in which he or she will cease to hold office.

Regulation 6 provides for the remuneration of members. The Chairman will receive £686 per day, the Deputy Chairman £343 per day and the other members £90 per day. They will also be eligible for reimbursement of their reasonable expenses.

Regulation 7 provides that employment disputes involving individuals will normally be dealt with by the Chairman or Deputy Chairman, sitting alone. However, the Chairman may direct that a dispute be heard before the Tribunal consisting of 3 members, under Regulation 8.

Regulation 8 provides that in all collective employment disputes, and in individual employment disputes when so directed by the Chairman, the Tribunal shall consist of 3 members. The Chairman, or Deputy Chairman, is to preside and the other 2 members are to be chosen by the Chairman by reason of their knowledge and experience of or interest in employees and employers respectively (as described in (c) and (d) above).

The Chairman must choose those other members in rotation, as far as practicable.

Regulation 9 enables the Deputy Chairman to exercise the Chairman's administrative powers if the latter cannot act.

Regulation 10 requires the Employment and Social Security Committee to submit an annual report to the States on the activities of the Tribunal.

Regulation 11 provides for the citation of the Regulations. If adopted by the States, they would come into force on the same day as the Employment (Jersey) Law 2003.



Jersey

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Jersey

DRAFT EMPLOYMENT TRIBUNAL (JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 82 and 104 of the Employment (Jersey) Law 2003,^[1] have made the following Regulations –

1 Interpretation

In these Regulations, unless the context otherwise requires –

“Committee” means the Employment and Social Security Committee;

“member” means the Chairman, the Deputy Chairman or any other member of the Tribunal.

2 The Jersey Employment Tribunal

The Jersey Employment Tribunal shall consist of the following members –

- (a) a Chairman, being a person who holds a qualification in law;
- (b) a Deputy Chairman, being a person who holds a qualification in law;
- (c) not fewer than 2 or more than 6 other members, being persons with knowledge or experience of or interest in trade unions or matters relating to employees generally; and
- (d) not fewer than 2 or more than 6 other members, being persons with knowledge or experience of or interest in employers’ associations or matters relating to employers generally.

3 Appointment of members

- (1) The Chairman, Deputy Chairman and other members of the Tribunal shall each be appointed by the States on the recommendation of the Jersey Appointments Commission established with the approval of the Act of the States dated 28th May 2002.
- (2) Before making a recommendation under paragraph (1), the Appointments Commission shall consult the Employment and Social Security Committee.

4 Tenure of members

- (1) A member of the Tribunal shall hold office for such period, not exceeding 5 years, as is specified in his or her appointment.
- (2) At the member’s written request, he or she shall be entitled to have the term of office extended for one further period of the member’s choice, not exceeding 5 years.
- (3) Except as provided in paragraph (2), no member of the Tribunal is eligible for an extension of the

period of his or her term of office, or for re-appointment.

- (4) However, a member may continue in office, after the expiry of his or her term of office, for the purposes of completing any proceeding that the member has begun to hear before the expiry of the term of office.
- (5) This Article is subject to Article 5.

5 Termination of office

- (1) A member of the Tribunal shall cease to hold office on resigning, in writing delivered to the Committee.
- (2) The Chairman or Deputy Chairman shall cease to hold office if he or she ceases to hold a qualification in law.
- (3) Any member of the Tribunal shall cease to hold office –
 - (a) on becoming bankrupt;
 - (b) on the appointment of a curator of the member's property and affairs under the Mental Health (Jersey) Law 1969;^[2]
 - (c) on being received into guardianship under the Mental Health (Jersey) Law 1969;^[3] or
 - (d) on being removed from office by the Royal Court, on grounds of misconduct proved to its satisfaction.
- (4) A member of the Tribunal shall not be removed from office for any other reason.

6 Remuneration of members

- (1) A member of the Tribunal shall be paid remuneration at the following rate for each day or part of a day on which he or she sits –
 - (a) if the member is the Chairman, £686;
 - (b) if the member is the Deputy Chairman, £343;
 - (c) in the case of any other member, £90.
- (2) The members of the Tribunal may also be paid such reasonable expenses as the Committee may determine.
- (3) The payments shall be made out of the income of the States.

7 Sittings before single adjudicator

- (1) In proceedings before the Tribunal relating to an individual employment dispute one member, being the Chairman or Deputy Chairman, shall constitute the Tribunal.
- (2) However, if the Chairman thinks it is desirable to do so, he or she may direct that in proceedings relating to a particular individual employment dispute the Tribunal shall be constituted in accordance with Article 8.

8 Sittings before 3 adjudicators

- (1) This Regulation applies –
 - (a) to proceedings before the Tribunal in respect of which the Chairman has given a direction under Regulation 7(2); and
 - (b) to any proceedings before the Tribunal to which Regulation 7 does not apply.

- (2) In any proceedings before the Tribunal to which this Regulation applies 3 members, consisting of–
 - (a) the Chairman or Deputy Chairman, as the presiding member;
 - (b) one member, being a member to whom Regulation 2(c) refers; and
 - (c) one member, being a member to whom Regulation 2(d) refers,shall constitute the Tribunal.
- (3) Where the Tribunal is to be constituted in accordance with paragraph (2), the Chairman shall determine which members shall so constitute it.
- (4) In doing so, he or she shall ensure as far as is reasonably practicable –
 - (a) that the members to whom Regulation 2(c) refers are chosen in rotation; and
 - (b) that the members to whom Regulation 2(d) refers are also chosen in rotation.
- (5) In any proceedings before the Tribunal in which it is constituted in accordance with paragraph (2)–
 - (a) all 3 members shall sit; and
 - (b) the determination of any question before the Tribunal shall be according to the opinion of the majority of its members,but this paragraph is subject to paragraph (6).
- (6) If –
 - (a) the Tribunal has commenced hearing a matter; and
 - (b) before it determines the matter a member becomes unable to continue to act,the other members may with the consent of each party to the proceedings continue to hear the matter and determine it, as long as their number is not fewer than two.

9 Powers of Deputy Chairman if Chairman unable to act

If the Chairman is for any reason unable to exercise any power under Regulation 7(2) or Regulation 8(3) the Deputy Chairman may exercise that power.

10 Annual report

- (1) The Committee shall prepare an annual report on the activities of Tribunal.
- (2) The Committee shall lay a copy of the annual report before the States within 4 months after the end of the year to which the report relates.

11 Citation and commencement

- (1) These Regulations may be cited as the Employment Tribunal (Jersey) Regulations 200-.
- (2) These Regulations come into force on the same day as the Employment (Jersey) Law 2003.

[1] *Recueil des Lois, Volume 2003, pages 533 and 546.*

[2] *Recueil des Lois, Volume 1968-1969, page 345, Volume 1970-1972, page 549, Volume 1994-1995, page 119, Volume 2001, page 298, Volume 2004, page 699 and No. 5838.*

[3] *Recueil des Lois, Volume 1968-1969, page 345, Volume 1970-1972, page 549, Volume 1994-1995, page 119, Volume 2001, page 298, Volume 2004, page 699 and No. 5838.*