

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 9) (JERSEY) LAW 201-

Lodged au Greffe on 20th October 2015
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 9) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 9) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy S.J. Pinel of St. Clement**

Minister for Social Security

Dated: 16th October 2015

REPORT

The Employment (Amendment No. 9) (Jersey) Law 201- would replace the existing Article 94 of the Employment (Jersey) Law 2003 (“the Employment Law”) to clarify the procedure for the making of appeals to the Royal Court against decisions of the Jersey Employment and Discrimination Tribunal (“the Tribunal”).

The current Article 94(2) of the Employment Law provides that –

“An appeal under paragraph (1) may only be made with leave of the Tribunal or the Royal Court, and must be made before the end of the period of 4 weeks beginning with the date of the Tribunal’s decision or order.”

In the course of drafting Rules of Court to govern such appeals to the Royal Court, difficulties were identified with this provision. It was not clear whether the 4-week period was intended to be the time limit for bringing the application for leave to appeal, or the time limit for bringing the appeal itself. If it was the latter (as it appeared to be), then it seemed to require an appellant to have obtained leave to appeal, and to have lodged the appeal, within that 4-week period, irrespective of how long it might take the applicant to obtain such leave. It was noted in any event that there seemed to be no discretion to vary the 4-week time period, which might be unfair on an appellant who was prevented through no fault of their own from bringing the appeal within that time period.

These concerns were drawn to the attention of the Minister for Social Security (“the ‘Minister’”) and law drafting has been undertaken to revise this provision, in consultation with the Bailiff, and representatives of the Judicial Greffe and the Tribunal, with advice from the Law Officers’ Department.

The draftsman’s Explanatory Note for the draft Law sets out the detail of the revised provision that is proposed to be made.

The Minister understands that the relevant parties are satisfied with the replacement draft Article 94, and that there is some urgency in amending the Employment Law to clear up the uncertainty around the time limit and to provide the appropriate flexibility to the Court. Because of the present uncertainty, there are currently no Rules of Court governing the detailed procedure on appeals from the Tribunal to the Royal Court, and this is considered to be unsatisfactory. The Minister intends that the new Article 94 would come into force as soon as possible to enable such Rules of Court to be made.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Note on the
Draft Employment (Amendment No. 9) (Jersey) Law 201-**

This Note has been prepared in respect of the Draft Employment (Amendment No. 9) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ Opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law substitutes Article 94 of the Employment (Jersey) Law 2003 (“Article 94”) which provides for a right of appeal on any question of law to the Royal Court from decisions of the Jersey Employment and Discrimination Tribunal. Article 94 in its present form was substituted by the Discrimination (Jersey) Law 2013, but has been found to lack clarity in several respects. Notably, it is not clear whether the period of 4 weeks referred to in Article 94 was intended to be the time limit for bringing the application for leave to appeal, or the time limit for bringing the appeal itself. The power of the Tribunal to vary the time for applying for leave, or to stay its own decisions pending appeal, is also unclear.

The substituted Article 94 contained in the draft Law –

- provides that –
 - leave to appeal must first be sought from the Tribunal and if refused by the Tribunal may be sought from the Court (at present leave may be sought either from the Tribunal or the Court in the first instance),
 - the period within which to apply to the Tribunal for leave to appeal is 28 days, but
 - the Tribunal has a discretion to vary the 28 day period;
- expressly empowers the Tribunal to order stays pending its own determinations or pending further order of the Royal Court; and
- removes the brake in Article 94 on appeals by persons who are the subject of an order under Article 1 of the Civil Proceedings (Vexatious Litigants) (Jersey) Law 2001.

The time within which to apply to the Royal Court for leave to appeal (or to appeal against a decision of the Tribunal) will be able to be specified by Rules of Court.

The Employment (Jersey) Law 2003 and Discrimination (Jersey) Law 2013 together set out the scheme for enforcement of obligations imposed by those Laws. They provide a simple method of enforcing the obligations, namely, by making a complaint to the Tribunal. Article 6 ECHR guarantees procedural fairness in the course of civil proceedings and a right of access to an independent and impartial tribunal for the determination of civil rights and obligations at a fair and public hearing. The determination of any complaint of a breach of the rights conferred by the Employment and Discrimination Laws amounts to the determination of a civil right for the purposes

of Article 6 of the ECHR. The scheme for enforcement of the Employment and Discrimination Laws is compatible with Article 6 of the ECHR.

The right of appeal from the Tribunal to the Court contained in Article 94 is the final component in that scheme. As is well known, Article 6 of the Convention does not provide for a right of appeal, although any such appeal rights that do exist are covered by Article 6, see *Delcourt v Belgium* (App. No. 2689/65) [25]. It follows that the fact that appeal rights are restricted is not an infringement of Article 6. It is just that such restrictions must be managed in a fair and just system, which plainly they are. The revised provisions of Article 94 contained in the draft Law are compatible with Article 6 of the ECHR.

Explanatory Note

Article 1 of this draft Law would substitute Article 94 of the Employment (Jersey) Law 2003 (the “Law”) which provides for the making of appeals against decisions or orders of the Employment and Discrimination Tribunal (the “Tribunal”) to the Royal Court. The main effects of the proposed amendment are as follows –

- (a) under draft *Article 94(1)* of the Law, if a person wishes to appeal against a decision or order of the Tribunal, he or she must first apply for leave (i.e. permission) from the Tribunal to appeal to the Royal Court. Under draft *Article 94(6)* of the Law, if the Tribunal refuses to grant leave to appeal, the person may then if he or she so wishes, apply to the Royal Court for leave to appeal. Currently under Article 94 of the Law, a person is not required to apply in the first instance to the Tribunal for leave to appeal and may apply directly to the Royal Court instead;
- (b) under draft *Article 94(2)* of the Law, the application to the Tribunal for leave to appeal must be made within 28 days of the Tribunal’s decision or order. Draft *Article 94(3)* of the Law would enable the Tribunal to exercise a discretion to vary the 28 day time limit –
 - (i) either of its own motion, or
 - (ii) on an application to the Tribunal by the person aggrieved, which is made either within the 28 day time limit, or after its expiry;
- (c) under draft *Article 94(4)* of the Law, a person who is aggrieved by a Tribunal’s decision to refuse to change the 28 day time limit, or by any order which does so change it, may appeal directly to the Royal Court on the ground that the Tribunal was unreasonable. The Royal Court may make such order as it thinks fit including ordering the grant or refusal of leave to appeal;
- (d) under draft *Article 94(5)* of the Law, the Tribunal may order a stay of (i.e. defer) the implementation of the Tribunal’s original decision or order pending its decision as to whether to grant leave or not, or pending any order of the Royal Court if leave is granted or refused by the Tribunal or where under draft *Article 94(3)* the Tribunal determines an application to change the 28 day time limit or makes an order of its own motion to change that time limit; and
- (e) a superfluous provision concerning vexatious litigants is removed from Article 94 of the Law.

Article 2 provides for the title of this draft amendment Law and for it to come into force on the day after it is registered.



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 9) (JERSEY) LAW 201-

A LAW to amend further the Employment (Jersey) Law 2003

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Article 94 of the Employment (Jersey) Law 2003 substituted

For Article 94 of the Employment (Jersey) Law 2003¹, there is substituted the following Article –

“94 Appeals

- (1) A person aggrieved by a decision or order of the Tribunal may, on a question of law only, appeal to the Royal Court by applying to the Tribunal for leave to appeal.
- (2) An application to the Tribunal for leave to appeal must be made before the end of the period of 28 days beginning with the date of the Tribunal’s decision or order.
- (3) However, the Tribunal may make an order varying the 28 day period –
 - (a) of its own motion; or
 - (b) on application by the person aggrieved, which application may be made either within the 28 day period or after its expiry.
- (4) A person aggrieved by the Tribunal’s –
 - (a) decision to refuse an application under paragraph (3)(b); or
 - (b) order under paragraph (3),

may appeal to the Royal Court on the ground that the decision or order was unreasonable, and the Court may make such order as it thinks fit, including granting or refusing leave to appeal.

- (5) The Tribunal may order a stay of any decision or order to which the application for leave to appeal relates –
 - (a) pending the Tribunal’s determination of that application; or
 - (b) pending further order of the Royal Court where –
 - (i) the Tribunal grants or refuses leave to appeal, or
 - (ii) paragraph (3) applies.
- (6) Where the Tribunal refuses leave to appeal, the person aggrieved may apply to the Royal Court for leave to appeal.”.

2 Citation and commencement

This Law may be cited as the Employment (Amendment No. 9) (Jersey) Law 201- and shall come into force on the day after the day it is registered.

¹ *chapter 05.255*