

STATES OF JERSEY

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DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 4)(JERSEY) LAW 200

**Lodged au Greffe on 7th December 2007
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 4) (JERSEY) LAW 200

European Convention on Human Rights

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

In the view of the Chief Minister the provisions of the Draft Advocates and Solicitors (Amendment No. 4, (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

The purpose of this *projet de loi* is to make two relatively straightforward amendments to the Advocates and Solicitors (Jersey) Law 1997 (“the 1997 Law”) which lays down the academic and other requirements for admission to practice as an advocate or as a solicitor (*écrivain*) of the Royal Court.

I. *Requirement to be ‘a fit and proper person’*

Before 1860 in the case of advocates, and before 1867 in the case of solicitors, the appointment of members to either branch of the profession was within the discretion of the Bailiff. It was for him to assess in every respect (both in terms of academic qualifications and in terms of good character) whether or not an applicant was a fit and proper person to be admitted to the Bar or as a solicitor of the Royal Court.

However, the *Loi (1860) sur l’ouverture du Barreau* opened the Bar to all those who offered “*des garanties sérieuses de capacité*” by laying down academic criteria for admission. Once these criteria were satisfied, it was for the Attorney General to move conclusions in the Royal Court as to whether or not the candidate should take the oath of advocate.

In similar fashion, the *Loi (1867) sur le mode de nomination des Écrivains* opened the solicitors’ ranks to those who offered “*des garanties de capacité*”. An examination board was established and solicitors’ examinations introduced. A requirement to have worked in a solicitor’s office for a minimum of 5 years was also introduced.

Those two Laws, at different stages in the one and a half centuries since the 1860s, were repealed and re-enacted in various forms, but finally came together in the 1997 Law. A range of academic qualifications and vocational experience is now required - in addition to certain requirements of citizenship – for a person who wishes to be admitted whether as an advocate or as a solicitor. A person who satisfies the statutory criteria and who wishes to be admitted must apply to the Attorney General. If the statutory criteria are met, a sitting of the Royal Court must be convened. Under Article 8(5) of the 1997 Law–

“At such sitting, the Attorney General shall submit the application and the accompanying documentary evidence to the Royal Court, together with the Attorney General’s conclusions”.

If the Royal Court grants the conclusions of the Attorney General, the oath of advocate or solicitor, as the case may be, will be administered to the applicant. There is no difficulty with this in the case of an applicant who meets the statutory criteria and is of good character. There is, however, nothing in the 1997 Law that appears to require the Attorney General and, in turn, the Royal Court to be satisfied that the applicant is of good character.

In order to overcome this deficiency in the 1997 Law, the draft amendment would add a requirement that, upon an application for admission as an advocate or as a solicitor, the Royal Court would, in addition to all other criteria, have to be satisfied that the applicant was a fit and proper person to be admitted.

II. *Period of employment in ‘a relevant office’.*

The second respect in which the 1997 Law would be amended relates to a more specific aspect of vocational experience, namely, the length of time certain applicants need to have been employed in a lawyers’ office before being admitted as an advocate or as a solicitor. In this context, the expression “relevant office” means an advocate’s or a solicitor’s office in Jersey, the Law Officers Department or the Judicial Greffe.

Article 3(2) of the 1997 Law requires a prospective advocate to have been employed in one, or more than one relevant office –

“...for the period of 2 years immediately preceding the person’s application...”.

A prospective solicitor is required by Article 4(2) of the 1997 Law to have been employed in one, or more than one, relevant office –

“...for the period of 3 years immediately preceding the person’s application...”.

The proposed change is simple. In the case of a prospective advocate, the requirement would be changed to one whereby, in the period of three years immediately preceding the person’s application for admission to the Bar, he or she would have to have been employed for a period of, or periods totalling, two years in a relevant office or in more than one such office.

In the case of a prospective solicitor, the requirement would be changed to one whereby, in the period of four

years immediately preceding the person's application for admission as a solicitor, he or she would have to have been employed for a period of, or periods totalling, three years in a relevant office or in more than one such office.

This amendment would marginally widen the ability of a successful examinee to be admitted, and would also make it easier for non-legal businesses to recruit those in the last stages of qualification as Jersey lawyers. It is thought a desirable amendment for those reasons.

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

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister 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). On 6th December 2007 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Advocates and Solicitors (Amendment No. 4, (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Advocates and Solicitors (Jersey) Law 1997. The main changes are as follows.

The first change relates to the requirement that a person completes 2 years in a relevant office (that is an advocate's or solicitor's office in Jersey, the Law Officers' Department or the Judicial Greffe) immediately preceding that person's application for admission to the Bar or completes 3 years in such an office immediately preceding that person's application as a solicitor. The effect of these amendments is that employment for a period or periods of 2 years in the 3 years immediately preceding that person's application for admission to the Bar, or for 3 in the 4 years immediately preceding that person's application for admission as a solicitor, is sufficient to meet this requirement.

The second change is to add a further requirement for admission to the Bar or as a solicitor to the effect that the applicant must be a fit and proper person to be admitted.



Jersey

DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 4) (JERSEY) LAW 200

Arrangement

Article

- 1 Interpretation
- 2 Article 3 amended
- 3 Article 4 amended
- 4 Citation and commencement



Jersey

DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 4) (JERSEY) LAW 200

A LAW to amend further the Advocates and Solicitors (Jersey) Law 1997.

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 Interpretation

In this Law “the principal Law” means the Advocates and Solicitors (Jersey) Law 1997^[1].

2 Article 3 amended

(1) In Article 3 of the principal Law –

(a) at the end of paragraph (1)(a) the word “and” shall be deleted;

(b) for the full-stop at the end of paragraph (1)(b) there shall be substituted the words “; and”;

(c) after paragraph (1)(b) there shall be added the following sub-paragraph –

“(c) the Royal Court is satisfied that the person is a fit and proper person to be admitted.”;

(d) for paragraph (2)(b) there shall be substituted the following sub-paragraph –

“(b) in the period of 3 years immediately preceding the person’s application for admission to the Bar in accordance with Article 8, the person has been employed for a period of, or periods totalling, 2 years in a relevant office or in more than one such office.”.

(2) Article 3(5) shall be repealed.

3 Article 4 amended

In Article 4 of the principal Law –

(a) at the end of paragraph (1)(a) the word “and” shall be deleted;

(b) for the full-stop at the end of paragraph (1)(b) there shall be substituted the words “; and”;

(c) after paragraph (1)(b) there shall be added the following sub-paragraph –

“(c) the Royal Court is satisfied that the person is a fit and proper person to be admitted.”;

(d) for paragraph (2)(c) there shall be substituted the following sub-paragraph –

“(c) in the period of 4 years immediately preceding the person’s application for admission as a solicitor in accordance with Article 8, the person has been employed for a period of, or periods totalling, 3 years in a relevant office or in more than one such office.”;

(e) for paragraph (5) there shall be substituted –

“(5) A break in the period of employment of 2 years mentioned in paragraph (3)(b) or a break of employment immediately following that period shall be disregarded if –

(a) the break did not exceed 6 months; and

(b) the Attorney General is satisfied that there was adequate reason for the break,

but any such break or breaks shall not count as part of that period of employment.”.

4 Citation and commencement

This Law may be cited as the Advocates and Solicitors (Amendment No. 4) (Jersey) Law 200~~0~~ and shall come into force on the 7th day following its registration.

