

**DRAFT TERMS OF EMPLOYMENT (JERSEY) REGULATIONS 200-**

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by the Employment and Social Security Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## Report

The triennial Regulations which deal with the requirement for an employer to issue a statement of an employee's terms and conditions within four weeks of the employee commencing employment are due to expire on 31st March 2001. Two years ago, when "Fair Play in the Work Place" was released by the Employment and Social Security Committee for consultation, it was envisaged that the first tranche of new employment legislation might be in place and that these Regulations would not require further renewal. However, this timetable has not been met and accordingly the current Regulations require renewal.

The only change in the revised Regulations, other than changes in "house style" incorporated by the Law Draftsman, relates to the withdrawal of all references to the Industrial Relations Advisory Officer. This is because the new Jersey Advisory and Conciliation Service (JACS) is due to open in April 2001 and it is intended that JACS will absorb the services currently provided by the Industrial Relations Advisory Officer.

Under the current 1998 Regulations, the Industrial Relations Advisory Officer has statutory powers to make a referral on behalf of an aggrieved individual to the Terms of Employment Officer under the Terms of Employment Regulations in paragraphs 6(2) and (3).

By virtue of paragraph 6(2), he is empowered to refer any omission on the part of an employer to provide to an employee a statement of terms and conditions of employment or any omission to provide a statement to an employee notifying any change in his/her terms and conditions of employment, in accordance with the Regulations, to the Terms of Employment Officer for determination of the particulars.

By virtue of paragraph 6(3), he can refer any question arising in connection with the particulars which should have been included or referred to in the statement of terms and conditions to the Terms of Employment Officer for determination. The statements are required to be issued within four weeks of either the employment starting or the change occurring.

It is not proposed at this stage, in the renewed Regulations, to substitute any reference to personnel working for JACS in paragraphs 6(2) and (3). The reference to the Industrial Relations Advisory Officer was added to the Regulations when they were last renewed in 1998. Prior to the 1998 amendment, only the employee or the employer could refer a matter to the Terms of Employment Officer. To assist employees and employers, the addition of the Industrial Relations Advisory Officer and also "a person nominated" by the employee or the employer were included in the Regulations as people who could make referrals. By virtue of the retention of the "a person nominated" reference, the JACS staff will be able to be nominated by an employee or employer to make any referral to the Terms of Employment Officer if necessary. Legislation is currently being drafted to establish JACS as an independent statutory body and will be brought before the States in the near future.

The Terms of Employment Officer and Deputy Terms of Employment Officer referred to in the Regulations are both appointed by the States from amongst the Advocates and Solicitors of the Royal Court. There are therefore no financial or manpower implications for the States as a result of the renewal of these Regulations.

23rd January 2001

## Explanatory Note

The purpose of these draft triennial Regulations is to require an employer to give an employee a written statement of the terms of his employment. They re-enact with minor amendments the provisions of the Terms of Employment (Jersey) Regulations 1998 which expire on 31st March 2001.

*Regulation 1* is the interpretation provision.

*Regulation 2* is the requirement for an employer to give an employee, within four weeks of his starting work, a written statement of the terms of his employment. *Paragraph (2)* sets out the particulars to be included in a statement. *Paragraph (4)* enables particulars to be included by reference to another document to which the employee has access.

*Regulation 3* requires an employer to give an employee a further written statement in the event of a change in the terms of his employment. The notice must be given within four weeks of the change and the particulars can be included by reference to another document to which the employee has access. An employer must also give an employee immediate notice of a change of the employer's name.

*Regulations 4 and 5* set out exceptions to the requirement to give a written statement. A written statement need not be given to an employee who has a written contract of employment which contains the necessary particulars and of which the employee has a copy. A written statement need not be given to an employee normally working less than eight hours a week, or wholly or mainly outside the Island.

*Regulation 6* provides for the appointment by the States of a Terms of Employment Officer and deputy. An employee can refer a failure to give a written statement to the Terms of Employment Officer. An employee or an employer can refer a question as to the particulars to be included in a written statement to the Terms of Employment Officer. Either the employee or employer may use a nominee. The Terms of Employment Officer may determine what particulars should have been included and those particulars are then deemed to have been included in the statement. The Terms of Employment Officer has power to require persons to attend before him and give evidence on oath and produce documents.

*Regulation 7* makes it an offence, punishable by a fine not exceeding level 2 on the standard scale, for an employer to fail to comply with the Regulations. The same penalty is prescribed for any person who fails to attend, give evidence or produce documents when required by the Terms of Employment Officer.

*Regulation 8* is the citation, commencement and duration provision.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, the standard scale of fines is -

Level 1	£50
Level 2	£500
Level 3	£2,000
Level 4	£5,000.

## TERMS OF EMPLOYMENT (JERSEY) REGULATIONS 2001

(Promulgated on the \_\_\_\_\_ day of \_\_\_\_\_ 2001)

### STATES OF JERSEY

The \_\_\_\_\_ day of \_\_\_\_\_ 2001

**THE STATES**, by virtue and in exercise of the powers conferred upon them by the Order in Council of the fourteenth day of April 1884, <sup>(1)</sup> have made the following Regulations -

#### Interpretation

1.-(1) In these Regulations, unless the context otherwise requires-

“employee” means an individual who has entered into or works under a contract of employment;

“employer”, in relation to an employee, means a person by whom the employee is employed;

“employment” means employment under a contract of employment;

“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.

(2) A reference in these Regulations to a Regulation by number only and without further identification, is a reference to the Regulation of that number in these Regulations.

(3) A reference in a Regulation or other division of these Regulations to a paragraph by number only and without further identification is a reference to the paragraph of that number in the Regulation or other division of these Regulations.

#### Statement of terms of employment

2.-(1) Subject to Regulations 4 and 5, not later than four weeks after an employee begins employment, the employer shall give to the employee a written statement in accordance with this Regulation.

(2) A statement given under this Regulation shall, subject to paragraphs (3) and (4), contain the following particulars -

- (a) the identity of the parties;
- (b) the title of the job;
- (c) the date on which the employment started;
- (d) the period of notice which the employee is obliged to give and entitled to receive to terminate his employment;
- (e) if the employment is for a fixed term, the date on which the contract of employment expires;
- (f) the scale or rate of pay and the method of calculating pay (including overtime rates, shift pay and other pecuniary benefits) as at the date of the statement;
- (g) the pay day, the frequency (that is, whether weekly or monthly or some other period) and the method of payment;
- (h) the normal working hours and any overtime requirements; and

- (j) terms 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 pay during any period of such incapacity,
  - (iii) maternity leave,
  - (iv) pension and pension schemes,
  - (v) redundancy, and
  - (vi) disciplinary and grievance procedures.

(3) If there are no particulars to be included in the statement under any of the sub-paragraphs (d) to (j) of paragraph (2), that fact shall be stated in writing on the statement.

(4) A statement given under this Regulation may, for all or any of the particulars to be included in the statement, refer the employee to a 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.

#### **Changes in terms of employment**

3.-(1) If, after the date on which a statement is given under Regulation 2, there is a change in the terms of employment to be included or referred to in that statement, the employer shall, not more than four weeks after the change, give to the employee a written statement notifying him of the change.

(2) A statement given under paragraph (1) may, for all or any of the particulars to be given by the statement, refer the employee to a 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.

(3) If, after an employer has given to an employee a written statement under Regulation 2, the name of the employer is changed, without any change in the identity of the employer or 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, shall give to the employee a written statement notifying him of the change.

#### **Exclusion of certain written contracts**

4. Regulations 2 and 3 shall not apply to an employee if -

- (a) his contract of employment is in writing, in one or more documents, and contains express terms to the same effect as those required to be specified under Regulation 2(2); and
- (b) his employer has given him a copy of the contract (with any variations made from time to time) or he has reasonable opportunity of reading such copy in the course of his employment or such a copy is made reasonably accessible to him in some other way;

but, if at any time after the start of his employment any or all of the terms of the contract cease to be applicable to the employee, the employer shall, not more than four weeks after that time, give him a written statement in accordance with Regulation 2.

#### **Exceptions**

5.-(1) Nothing in these Regulations shall apply to an employee

- (a) whose normal hours of employment are less than eight hours a week;

(b) who is engaged in work wholly or mainly outside the Island unless the employee ordinarily works in the Island and the work outside the Island is for the same employer.

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

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

### **Determination of questions**

6.-(1) There shall be appointed by the States, from among the Advocates and Solicitors of the Royal Court, to hold office during such period as the States may direct, an officer, to be known as “the Terms of Employment Officer”, to carry out the functions set out in this Regulation and an officer, to be known as “the Deputy Terms of Employment Officer”, to act in the event of the unavailability of the Terms of Employment Officer.

(2) If an employer does not give an employee a statement as required by Regulation 2 or Regulation 3, the employee or a person nominated by the employer for the purpose may refer this omission to the Terms of Employment Officer who shall determine what particulars should have been included or referred to in a statement in order to comply with those Regulations.

(3) If a statement purporting to be a statement under Regulation 2 has been given to an employee, and a question arises as to the particulars which should have been included or referred to in the statement in order to comply with these Regulations, the employer, the employee or a person nominated by the employer or employee for the purpose may refer the question to the Terms of Employment Officer, who shall determine it.

(4) If, on a reference under this Regulation, the Terms of Employment Officer determines particulars as being those which should have been included or referred to in a statement given under Regulation 2 or Regulation 3, the employer shall be deemed to have given the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Terms of Employment Officer.

(5) The Terms of Employment Officer shall not entertain a reference under this Regulation if the employment to which the reference relates has ceased, unless the reference is made before the end of the period of three months commencing with the date on which the employment ceased.

(6) The Terms of Employment Officer shall sit in private to determine questions under these Regulations but otherwise shall determine his own procedure.

(7) For the purpose of ascertaining the terms of employment on a reference under this Regulation, the Terms of Employment Officer may give notice in writing to persons requiring them to -

- (a) attend before him and answer questions; and
- (b) produce such documents as may be specified in the notice.

(8) The Terms of Employment Officer may require any person appearing before him to give evidence on oath and, for that purpose, shall have power to administer an oath to such persons.

(9) A person who without reasonable excuse fails to -

- (a) comply with paragraph (7); or
- (b) give evidence on oath when so required under paragraph (8),

shall be guilty of an offence.

### **Offences and penalties**

7.-(1) An employer who contravenes Regulation 2, 3 or 4 shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale. <sup>[2]</sup>

(2) A person guilty of an offence under Regulation 6(9) shall be liable to a fine not exceeding level 2 on the standard scale.<sup>2</sup>

(3) Where an offence under these Regulations committed by a limited liability partnership or 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 person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) 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.

#### **Citation and duration**

**8.**-(1) These Regulations may be cited as the Terms of Employment (Jersey) Regulations 2001.

(2) These Regulations shall come into force on the first day of April 2001 and shall remain in force for three years from that date.

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[1] Recueil des Lois, Tomes IV-VI, page 46.

[2] Recueil des Lois, Volume 1992-1993, page 437.