

# STATES OF JERSEY



## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 5) (JERSEY) LAW 201-**

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**Lodged au Greffe on 23rd March 2010  
by the Chief Minister**

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**STATES GREFFE**





Jersey

## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 5) (JERSEY) LAW 201-**

### **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. 5) (Jersey) Law 201- are compatible with the Convention Rights.

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

## REPORT

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### *Introductory*

This *projet de loi* would amend the Advocates and Solicitors (Jersey) Law 1997 with regard to 3 matters –

- the first relates to certain nationality and citizenship requirements for candidates for admission to the Jersey Bar or as a solicitor (*écrivain*) of the Royal Court;
- the second relates to the calculation of periods spent by candidates in advocates' or solicitors' offices outside Jersey; and
- the third relates to the fixing of dates for the holding of qualifying examinations.

#### 1. *Nationality/Citizenship requirement*

1.1 The existing Law imposes various requirements for persons seeking to qualify as an advocate or solicitor of the Royal Court. There are stringent academic, educational and vocational training requirements, including a requirement to have been employed for given periods in an advocate's or a solicitor's office or in the Law Officers' Department or the Judicial Greffe.

1.2 In addition to the educational and vocational training requirements, the Royal Court must be satisfied in all cases that the candidate is a fit and proper person.

1.3 Superimposed upon the above requirements is yet a further requirement that the candidate is either –

- a Commonwealth citizen or a citizen of the European Union (a 'qualifying citizen'); or
- a national of an EFTA State which is a party to the European Economic Area Agreement (a 'qualifying national').

1.4 Originally a candidate had to be a British Subject. This stemmed from –

- (i) the *Loi (1860) sur l'ouverture du Barreau* in relation to advocates, and
- (ii) the *Loi (1867) sur le mode de nomination des Écrivains* in relation to solicitors,

each of which required the prospective lawyer to be a *sujet Britannique*.

1.5 The Legislation Advisory Panel was recently asked to review this area of the Law. The Panel noted that, under the existing Law, a person who –

- (i) satisfied all the academic, educational and vocational training requirements; and
- (ii) was accepted as a fit and proper person under the Law,

might still be prevented from applying to be admitted by the Royal Court as an advocate or solicitor if he or she failed to meet the citizenship or nationality test. Thus, for example, a Swiss national would not meet the test and, even though he or she might be able to demonstrate the very best academic and professional ability and be accepted without question as a fit and proper person, he or she would be disqualified even from applying to sit the qualifying examinations.

- 1.6 This struck the Panel as unfair, whether the candidate was of Swiss, or any other, nationality. However, before recommending an amendment of the Law, the Panel wished to know what the position was in other jurisdictions.
- 1.7 In the United Kingdom, the Act of Settlement 1700 had provided that: “... *no Person born out of the Kingdoms of England Scotland or Ireland or the Dominions thereunto belonging . . . shall be capable to be of the Privy Councill or a Member of either House of Parliament or to enjoy any Office or Place of Trust either Civill or Military or to have any Grant of Lands Tenements or Hereditaments from the Crown to himself or to any other or others in Trust for him*”.
- 1.8 This had the effect of barring foreigners from the legal profession, but legislation in the 20th Century steadily disapplied it. So, *e.g.* section 29 of the Solicitors Act 1974 provided that: “*Nothing in section 3 of the Act of Settlement (which provides among other things that aliens are incapable of enjoying certain offices or places of trust) shall be taken to disqualify a person from becoming or practising as a solicitor of the Supreme Court or of the Supreme Court of Northern Ireland.*”.
- 1.9 Section 42 of the Courts Act 2003 extended this principle to other offices in the judiciary by providing that nothing in section 3 of the Act of Settlement invalidated “*any appointment, whether made before or after the passing of this Act, of a justice of the peace*”.
- 1.10 The Panel also took account of the case of *Andrews v. Law Society of British Columbia* [1989] 1 S.C.R. 143 in which the Supreme Court of Canada considered whether the Canadian citizenship requirement for admission to the Bar of British Columbia had infringed the equality rights guaranteed by s. 15(1) of the *Canadian Charter of Rights and Freedoms* and, if it had, whether that infringement was justified. The Supreme Court found that –  

*“While certain state activities may, for both symbolic and practical reasons, be confined to those who are full members of our political society, such restriction should not apply to the legal profession as a whole. The practice of law is primarily a private profession. A lawyer working for a private client does not play a role in the administration of justice requiring citizenship. Ordinary lawyers are not privy to government information and there are rules to restrict lawyers from obtaining confidential governmental information. Their situation differs from those involved in government policy-making or administration.”*
- 1.11 The Court held that the Canadian citizenship requirement for admission to the Bar of British Columbia infringed the equality rights guaranteed by the

*Canadian Charter of Rights and Freedoms* and that such infringement was not justified.

- 1.12 In relation to the European Union, research indicated that the following countries had either relaxed or abolished altogether any nationality requirement: Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Luxembourg, Spain and Sweden.
- 1.13 Further, it was ascertained that the Australian provinces of Queensland, New South Wales, Western Australia and Victoria do not render access to the legal profession subject to any nationality requirement.
- 1.14 The Panel also had the benefit of the following view expressed by the Jersey Law Society, namely, that it “... *generally felt no concern as to widening the provisions of the Law in respect of the required citizenship or nationality to sit the examinations or to be sworn as an advocate or solicitor. Generally, [the Law Society] took the view that if a person had the educational and professional qualifications required, had passed the appropriate Jersey examinations and discharged the residency and ... experience tests, nationality was to all intents and purposes irrelevant.*”
- 1.15 The Legislation Advisory Panel, having taken the advice of the Attorney General, arrived at the same conclusion, and decided to recommend to the Chief Minister that the existing Law be amended to remove this apparent unfairness.
- 1.16 Therefore, this draft Law, if passed by the States, will delete those provisions of the principal Law relating to ‘a qualifying citizen’ and ‘a qualifying national’. Those provisions are –
- Article 1(2) (*i.e.* the definition of ‘qualifying citizen’ and ‘qualifying national’)
  - Article 3(1)(a) (in relation to advocates)
  - Article 4(1)(a) (in relation to solicitors) and
  - Article 5(1)(b) (in relation to applications to sit examinations).

#### *Period of employment outside Jersey*

- 2.1 Article 3(2)(b) of the principal Law requires a person seeking admission as an advocate to show that he or she has, in the 3 years before applying for admission, been employed for at least 2 years in a Jersey lawyer’s office.<sup>1</sup> This period of 2 years can be made up partly of time spent employed in an advocate’s or a solicitor’s office *outside* Jersey (Article 3(4)). But the Law is so worded that, if the person concerned has spent more than 6 months employed in an office *outside* Jersey, then the whole period of employment outside Jersey will not count towards the total of 2 years required under Article 3(2)(b).
- 2.2 This means that if the period of employment in – say – London exceeds 6 months, none of the time spent in the London office can be counted. There is general agreement that this provision operates rather illogically at the

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<sup>1</sup> *i.e.* in an advocate’s or solicitor’s office in Jersey or in the Law Officers’ Department or in the Judicial Greffe.

moment. The purpose of the draft Law is to amend Article 3 of the principal Law so that, at any rate, 6 months of the time so spent is able to be counted.

- 2.3 Articles 4(2)(c) and 4(4) of the principal Law make corresponding provision in the case of candidates for admission as a solicitor of the Royal Court; and the draft Law would amend Article 4 to the same effect for solicitors.

#### *Holding of examinations*

- 3.1 Article 6(2) of the principal Law provides, in relation to both advocates' and solicitors' qualifying examinations, that –

*“... the qualifying examination shall be held twice in each year, in the months of April and October or in such other months as may be specified [by Rules of Court<sup>2</sup>], and shall not commence before the 15th day of the month in question”.*

- 3.2 This Article is very prescriptive. It makes it impossible for Rules of Court to specify *e.g.* that the examinations will take place once a year in June and July, with the opportunity only for re-sits in September. Such a modest change would require an amendment of the Law, passed by the States and sanctioned by Her Majesty in Council.

- 3.3 The purpose of the draft Law is to provide more flexibility by amending Article 6(2) to require that *“... the qualifying examination shall be held one or more times in each year, in one or more specified months”* (*i.e.* specified by Rules of Court).

There are no financial or manpower implications for the States arising from the adoption of this 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 22nd March 2010 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. 5) (Jersey) Law 201- are compatible with the Convention Rights.

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<sup>2</sup> Rules of Court are made by the Superior Number of the Royal Court.

## Explanatory Note

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These amendments would –

- (a) remove the requirement as to nationality or citizenship for admission to the Bar or as a solicitor;
- (b) make it clear that in the event that more than 6 months of Jersey legal experience is gained in an office outside Jersey, that can be counted as 6 months' qualifying experience for admission to the Bar or as a solicitor; and
- (c) require the holding (subject to demand) of one or more qualifying examinations each year instead of always requiring the holding (subject to demand) of two such examinations.





Jersey

## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 5) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT ADVOCATES AND SOLICITORS (AMENDMENT No. 5) (JERSEY) LAW 201-**

**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 “principal Law” means the Advocates and Solicitors (Jersey) Law 1997<sup>1</sup>.

### **2 Article 1 amended**

Article 1(2) of the principal Law shall be repealed.

### **3 Article 3 amended**

In Article 3 of the principal Law –

(a) paragraph (1)(a) shall be repealed;

(b) the following paragraphs shall be substituted for paragraph (4) –

“(4) For the purpose of paragraph (2)(b), employment in an advocate’s or solicitor’s office outside Jersey may be taken to be employment in a relevant office if the advocate or solicitor certifies that during the period of the person’s employment in the office the person was engaged predominantly in matters of Jersey law.

(5) If the total period of employment that is in an office or offices outside Jersey, and taken to be employment in a relevant office by

virtue of paragraph (4), exceeds 6 months, it shall be reckoned for the purpose of paragraph (2)(b) as only 6 months.”.

#### 4 Article 4 amended

In Article 4 of the principal Law –

- (a) paragraph (1)(a) shall be repealed;
- (b) the following paragraphs shall be substituted for paragraph (4) –

“(4) For the purpose of paragraph (2)(c) or (3)(b), employment in an advocate’s or solicitor’s office outside Jersey may be taken to be employment in a relevant office if the advocate or solicitor certifies that during the period of the person’s employment in the office the person was engaged predominantly in matters of Jersey law.

(4A) If the total period of employment that is in an office or offices outside Jersey, and taken to be employment in a relevant office by virtue of paragraph (4), exceeds 6 months, it shall be reckoned for the purpose of paragraph (2)(c) or (3)(b) as only 6 months.”.

#### 5 Article 5 amended

In Article 5 of the principal Law for paragraph (1) there shall be substituted the following paragraph –

- “(1) No person may apply to sit the qualifying examination unless –
  - (a) the person has attained the age of 21 years; and
  - (b) the person fulfils the specified educational requirement (if any).”.

#### 6 Article 6 amended

The following paragraph shall be substituted for Article 6(2) of the principal Law –

- “(2) Subject to paragraph (3), the qualifying examination shall be held one or more times in each year, in one or more specified months.”.

#### 7 Citation and commencement

This Law may be cited as the Advocates and Solicitors (Amendment No. 5) (Jersey) Law 201- and shall come into force on the 7th day following its registration.

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<sup>1</sup> *chapter 07.070*