

# STATES OF JERSEY



## **DRAFT EMPLOYMENT TRIBUNAL (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 8th August 2011  
by the Minister for Social Security**

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**STATES GREFFE**





Jersey

## **DRAFT EMPLOYMENT TRIBUNAL (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-**

### **REPORT**

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#### **Background**

The Employment Tribunal (Jersey) Regulations 2007 were drafted in accordance with best practice and with tenure for other similar bodies at the time of their approval, and were intentionally restrictive. However, certain provisions of the Regulations would have the unintended effect of preventing appointments that would be permitted in accordance with appropriate practice as specified by the Jersey Appointments Commission (JAC) 'Code of Practice for Appointments to Autonomous and Quasi-Autonomous Public Bodies and Tribunals'.

The views of the Chairman of the JAC have been taken during the preparation of the proposed amendment.

#### **Proposed amendments**

The Regulations would be amended as follows –

1. The Employment Tribunal (Jersey) Regulations 2007 currently restrict Employment Tribunal appointments to 2 terms (for a maximum of 5 years per term) with no eligibility for an extension or re-appointment. To reflect best practice, the amendment would allow the Minister to further appoint members, subject to the process being overseen and conducted in accordance with JAC guidance (see attached Appendix). The code of practice specifies that the terms of office for members of upper-tier bodies should not exceed 10 years in total, and it sets out the circumstances in which a further (second) re-appointment may be considered, such as if a member has served less than a total of 10 years in their first 2 terms. Further appointments would usually be subject to open recruitment, overseen by the JAC.
2. The Minister would be permitted to appoint one or more legally qualified 'Acting Chairmen', who could be appointed on short notice when both the Chairman and the Deputy Chairman are unable to perform their functions, such as where both are unavailable or conflicted. This is a significant risk in a small jurisdiction. The appointment of an Acting Chairman would occur in consultation with the JAC. The code of practice recognises that emergency appointments are sometimes necessary, but this would not be achievable

under the current Regulations, as only a Chairman and a Deputy Chairman may be appointed, plus a full JAC recruitment process would be required prior to any appointment.

3. A draft amendment to the Regulations was prepared that was intended to be progressed with the draft discrimination legislation. Accordingly, the Minister wishes to apply the additional circumstances in which a member ceases to hold office.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from this proposition.

**Jersey Appointments Commission (JAC) ‘Code of Practice for Appointments to Autonomous and Quasi-Autonomous Public Bodies and Tribunals’**

**Excerpt from 4.17 Terms and criteria for re-appointments**

**“(a) First re-appointments**

*First re-appointments (i.e., for a second term in office in the same role) may be made subject to satisfactory assessment of performance.*

**(b) Second re-appointments**

*Second re-appointments (i.e., for a third term in office in the same role) will be rare and can normally only be made if the individual has been considered alongside other applicants in open competition and has proved to be the most suitable candidate.*

*However, where the term of office of the member is comparatively short, i.e., not more than two years, the need to apply a competitive process can be delayed until the member has served six years.*

4.18 Further, where one of the following criteria applies to the current postholder –

- *She or he has particular skills or experience essential to efficient functioning of the Body; or*
- *She or he will provide continuity during a period of change (perhaps when a number of appointments are coming to an end simultaneously or bodies are merging); or*
- *Experience has clearly shown difficulty in attracting candidates with the requisite knowledge and experience;*

*the Commission would consider approving an extension of the person’s membership of the Body without the requirement to carry out a competitive process. An approach should be made to the Commission to approve such a way forward before any action is taken.”*

## Explanatory Note

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The objects of these Regulations are –

- (a) to formalize a requirement that appointments to the Jersey Employment Tribunal be made in accordance with the guidelines prepared by the Jersey Appointments Commission; and
- (b) to enable the appointment of an Acting Chairman to that Tribunal.

*Regulation 1* enables the Employment Tribunal (Jersey) Regulations 2005 to be referred to in these Regulations simply as the principal Regulations.

*Regulation 2* inserts definitions of “Acting Chairman”, “Chairman”, “Deputy Chairman” and the “Jersey Appointments Commission”. (That Commission is referred to in this explanatory note simply as the Commission.)

*Regulation 3* replaces Regulations 3 and 4 with new Regulations as follows –

- (a) Regulation 3, which, in providing for the appointment of members, will now formally require those appointments to be made in accordance with Commission guidelines;
- (b) Regulation 3A, enabling Acting Chairmen to be appointed to cover circumstances where neither the Chairman nor the Deputy Chairman is able to perform Tribunal functions;
- (c) Regulation 4, which, in making provision for members’ terms of office and for extensions of appointments, will require that an extension only be made after consultation with the Commission or as a fresh appointment under Regulation 3.

*Regulation 4* makes changes to the provisions on termination of office in order to accommodate the introduction of one or more Acting Chairmen and to introduce two additional grounds on which a member vacates office –

- (a) if the member is unable to sit on the Tribunal (when it consists of 3 members) and that goes on for more than 6 months and without appropriate consent;
- (b) if the Royal Court has found that the member has neglected his or her duties.

*Regulation 5* corrects an error of terminology.

*Regulation 6* sets out the short title of these Regulations and provides for them to come into force a week after they are made.



Jersey

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**Arrangement**

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**Regulation**

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Jersey

## **DRAFT EMPLOYMENT TRIBUNAL (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-**

*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<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations, the “principal Regulations” means the Employment Tribunal (Jersey) Regulations 2005<sup>2</sup>.

### **2 Regulation 1 amended**

In Regulation 1 of the principal Regulations, before the definition of “member” there shall be inserted the following definitions –

“ ‘Acting Chairman’ means a person appointed under Regulation 3A to act as Chairman;

‘Chairman’ means a member who under these Regulations is appointed to office as Chairman of the Tribunal;

‘Deputy Chairman’ means a member who under these Regulations is appointed to office as Deputy Chairman of the Tribunal;

‘Jersey Appointments Commission’ means the Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>.”.

### **3 Regulations 3, 3A and 4 substituted**

For Regulations 3 and 4 of the principal Regulations there shall be substituted the following Regulations –

**“3 Appointment of members**

- (1) The recruitment of members shall be overseen by, and conducted in accordance with the guidelines produced by, the Jersey Appointments Commission.
- (2) The members of the Tribunal shall be appointed by the States on the recommendation of the Minister after consultation with the Jersey Appointments Commission.

**3A Acting Chairman**

- (1) The Minister may from time to time appoint one or more persons, each of whom holds a qualification in law, to act as Chairman in any circumstances in which –
  - (a) the Chairman is unable to perform his or her functions as Chairman of the Tribunal; and
  - (b) the Deputy Chairman is unable to perform those functions instead of the Chairman.
- (2) Such an appointment can only be made after consultation with the Jersey Appointments Commission.
- (3) The instrument of appointment of a person under this Regulation shall specify the circumstances in which the person may act as Chairman.
- (4) An Acting Chairman holds office as a member and, while acting as Chairman, is the Chairman of the Tribunal.
- (5) However, Regulations 2, 3 and 4 shall not apply to an Acting Chairman or to his or her appointment as Acting Chairman.

**4 Term of office of members**

- (1) A member’s term of office shall be such period, not exceeding 5 years, as the States specify when appointing the member.
- (2) The Minister may, upon the written request of a member and after consultation with the Jersey Appointments Commission, extend the member’s initial term of office by re-appointing the member to the same office for a second term not exceeding 5 years.
- (3) Regulation 3 shall not apply in respect of such a re-appointment.
- (4) However, nothing in paragraph (2) or (3) shall prevent a re-appointment from being made in accordance with Regulation 3.
- (5) A member may continue in office after his or her term of office has expired, so long as the continuation is only for the purpose of completing any proceedings that the member began to hear before that expiry.”.

**4 Regulation 5 amended**

In Regulation 5 of the principal Regulations –

- (a) for paragraph (2) there shall be substituted the following paragraph –
  - “(2) The Chairman, the Deputy Chairman or an Acting Chairman shall cease to hold office if he or she ceases to hold a qualification in law.”;
- (b) in paragraph (3)(c), the word “or” shall be deleted;
- (c) for paragraph (3)(d) there shall be substituted the following sub-paragraphs –
  - “(d) if –
    - (i) in the case of a member that is the Chairman or an Acting Chairman, without the consent of the Minister, or
    - (ii) in the case of any other member, without the consent of the Chairman,the member has, for a continuous period of more than 6 months, been absent from any meetings of the Tribunal and unavailable to perform his or her functions in relation to the Tribunal when it was constituted in accordance with Regulation 8; or
  - (e) on being removed from office by the Royal Court on either of the following grounds proved to the satisfaction of that Court –
    - (i) that he or she has neglected his or her duties in relation to the Tribunal, or
    - (ii) misconduct.”;
- (d) after paragraph (4) there shall be added the following paragraph –
  - “(5) This Regulation shall have effect despite anything in Regulation 3A or 4.”.

## **5 Regulation 7 amended**

In Regulation 7(2) of the principal Regulations for the word “Article” there shall be substituted the word “Regulation”.

## **6 Citation and commencement**

These Regulations may be cited as the Employment Tribunal (Amendment No. 2) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- <sup>1</sup> *chapter 05.255*  
<sup>2</sup> *chapter 05.255.70*  
<sup>3</sup> *chapter 16.325*