

Jersey

EMPLOYMENT (JERSEY) LAW 2003

Official Consolidated Version

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Jersey

EMPLOYMENT (JERSEY) LAW 2003

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Jersey

EMPLOYMENT (JERSEY) LAW 2003

A LAW to amend and consolidate enactments relating to employers' obligations to specify terms of employment, the payment of wages, and the notice required to terminate contracts of employment; to provide for compulsory minimum periods of leave and rest time for employees; to provide employees with rights not to be unfairly dismissed and to be paid a minimum wage; and to repeal and replace enactments for the establishment and jurisdiction of Tribunals to hear and determine employment disputes; and for incidental and connected purposes.

Commencement [see endnotes]

PART 1

GENERAL

1 Interpretation and application

(1) In this Law, unless the context otherwise requires –

"affected employee" for the purposes of Part 6A has the meaning in Article 60F(13);

"breastfeeding" includes the act of expressing breast milk;

"civil proceedings" means proceedings before the Tribunal or civil proceedings before any court;

"collective agreement" means an agreement that has been settled by machinery of negotiation, mediation, conciliation or arbitration to which the parties are –

(a) an employer, or an organization of employers that is representative of a substantial proportion of the employers engaged in the trade or industry concerned; and

(b) employees who are representative of a substantial proportion of the employees engaged in the trade or industry concerned;

"collective employment dispute" means a collective employment dispute as defined in Article 5 of the Employment Relations (Jersey) Law 2007;

"company" means a company as defined under Article 1(1) of the Companies (Jersey) Law 1991 or a body corporate incorporated under an equivalent law of a jurisdiction outside Jersey;

"Discrimination Law" means the Discrimination (Jersey) Law 2013;

"effective date of termination" for the purposes of Parts 6A and 7 has the meaning in Article 63;

"employment dispute" means a dispute between an employer or employers and an employee or employees in the employment of that employer or employers which is connected with the terms of employment or with the conditions of labour of any of those employees or with the rights or duties of an employer or an employee;

"Employment Forum" means the body that, under Article 21, is to be regarded for the purposes of this Law as being the Employment Forum;

"enforcement notice" shall be construed in accordance with Article 27;

"fixed term contract of employment" means a contract of employment which, according to its terms, will expire on –

(a) the expiry of a specified period of time;

(b) a specified date;

(c) the occurrence or non-occurrence of a specified event; or

(d) the completion of a specified task or project;

"individual employment dispute" means an employment dispute that is not a collective employment dispute;

"JACS" means the Jersey Advisory and Conciliation Service established by the Jersey Advisory and Conciliation (Jersey) Law 2003;

"job", in relation to an employee, means the nature of the work which the employee is employed to do in accordance with his or her contract of employment and the capacity in and place at which he or she is so employed;

"limited liability company" means a limited liability company registered under the Limited Liability Companies (Jersey) Law 2018;

"limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 2017;

"lock-out" means –

(a) the closing of a place of employment;

(b) the suspension of work; or

(c) the refusal by an employer to continue to employ any number of persons he or she employs,

in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by that employer, to accept terms or conditions of or affecting employment;

"minimum wage" shall be construed in accordance with Article 16(3);

"Minister" means the Minister for Social Security;

"notice" means notice in writing;

"officer acting for the purposes of this Law" means an officer appointed under Article 96;

"pay reference period" shall be construed in accordance with Article 16(4);

"penalty notice" shall be construed in accordance with Article 29;

"person who qualifies for the minimum wage" shall be construed in accordance with Article 16(2) and related expressions shall be construed accordingly;

"prescribed" means prescribed by the Minister by Order;

"relevant agreement", in relation to an employee, means any provision of a collective agreement which forms part of a contract between the employee and his or her employer, or any other agreement in writing which is legally enforceable as between the employee and his or her employer;

"strike" means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

"Tribunal" means the Tribunal established by Article 81; and

"wages" means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by a relevant agreement or by or under an enactment, which are payable by virtue of a contract of employment by an employer to an employee for work done or to be done or for services rendered or to be rendered but does not include pensions contributions paid by the employer or any other ancillary non-monetary benefits.[1]

(2) This paragraph shall apply in any case where an individual (the "agency worker") –

(a) is supplied by a person (the "agent") to do work for another (the "principal") under a contract or other arrangements made between the agent and the principal; but

(b) is not, as respects that work, an employee, because of the absence of a contract of employment between the individual and the agent or the principal; and

(c) is not a party to a contract under which he or she undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(3) In a case where paragraph (2) applies, the other provisions of this Law shall have effect as if there were a contract of employment for the doing of the work by the agency worker made between the agency worker and –

(a) whichever of the agent and the principal is directly responsible for paying the agency worker in respect of the work; or

(b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

(4) A reference in this Law to a person being remunerated for a pay reference period is a reference to the person being remunerated by his or her employer in respect of his or her work in that pay reference period.

(5) This Law shall not apply to the employment of a person under which the person's work (of whatever description) relates to the employer's family household –

(a) where –

(i) the employee resides in the family home of the employer for whom he or she works,

(ii) the employee is not a member of that family, but is treated as such, in particular as regards to the provision of accommodation and meals and the sharing of tasks and leisure activities,

(iii) the employee is neither liable to any deduction, nor to make any payment to the employer, or to any other person, in respect of the provision of living accommodation or meals, and

(iv) had the work been done by a member of the employer's family, this Law would not apply because the conditions in sub-paragraph (b) would be satisfied; or

(b) where –

(i) the employee is a member of the employer's family,

(ii) the employee resides in the family home of the employer, and

(iii) the employee shares in the tasks and activities of the family,

and the employee's work is done in that context.

(6) This Law shall not apply to the employment of a person under which the person's work (of whatever description) relates to the employer's family business where –

(a) the employee is a member of the employer's family;

(b) the employee resides in the family home of the employer; and

(c) the employee participates in the running of the family business,

and the work is done in that context.

(7) A reference in this Law to doing work includes a reference to performing services; and "work" and other related expressions shall be construed accordingly.

(8) This Law shall not apply to the employment of a person as an officer of the States of Jersey Police Force.

1A "Employer" and "employee"

(1) In this Law –

(a) "employer" means a person who employs another person; and

(b) "employee" means a person who is employed by an employer.

(2) For the purposes of paragraph (1), a person is employed by another person if the first person works for the second person under a contract of service or apprenticeship with the second person.

(3) For the purposes of paragraph (1), a person is also employed by another person if the first person enters into any other contract with the second person under which –

(a) the first person undertakes to do, or to perform personally, work or services for the second person; and

(b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person.

(4) It is immaterial whether a contract to which paragraph (2) or paragraph (3) refers is express or implied.

(5) If the contract is express, it is immaterial whether it is oral or in writing.[2]

1B "Trade union"

(1) In this Law, "trade union" means an organization described in paragraph (2) or in paragraph (3).

(2) An organization is a trade union if –

(a) it consists wholly or mainly of employees of one or more descriptions; and

(b) its principal purposes include the regulation of relations between employees of that description or of those descriptions and employers or employers' associations.

(3) An organization is also a trade union if it consists wholly or mainly of –

(a) constituent or affiliated organizations that fulfil the conditions in paragraph (2), or that themselves consist wholly or mainly of constituent or affiliated organizations that fulfil those conditions; or

(b) representatives of any such constituent or affiliated organizations,

and its principal purposes include the regulation of relations between employees and employers or between employees and employers' associations, or the regulation of relations between its constituent or affiliated organizations.

(4) It is immaterial whether an organization described in paragraph (2) or in paragraph (3) is temporary or permanent.[3]

1C "Employers' association"

(1) In this Law, "employers' association" means an organization that is described in paragraph (2) or in paragraph (3).

(2) An organization is an employers' association if –

(a) it consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions; and

(b) its principal purposes include the regulation of relations between employers of that description or of those descriptions and employees or trade unions.

(3) An organization is also an employers' association if it consists wholly or mainly of –

(a) constituent or affiliated organizations that fulfil the conditions in paragraph (a), or that themselves consist wholly or mainly of constituent or affiliated organizations that fulfil those conditions; or

(b) representatives of any such constituent or affiliated organizations,

and its principal purposes include the regulation of relations between employers and employees or between employers and trade unions, or the regulation of relations between its constituent or affiliated organizations.

(4) It is immaterial whether an organization described in paragraph (2) or in paragraph (3) is temporary or permanent.[4]

2 Redundancy

(1) For the purposes of this Law an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) the fact that his or her employer has ceased or intends to cease –

(i) to carry on the business for the purposes of which the employee was employed by the employer, or

(ii) to carry on that business in the place where the employee was so employed; or

(b) the fact that the requirements of that business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of paragraph (1) the business of the employer together with the business or businesses of his or her associated employers shall be treated as one (unless either of the conditions specified in sub-paragraphs (a) and (b) of that paragraph would be satisfied without so treating them).

(3) In paragraph (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

(4) In paragraph (1) the reference to an employee who is dismissed shall be taken to refer to an employee who is dismissed by his or her employer in accordance with Article 62.[5]

2A Approval of codes of practice[6]

(1) The Minister may, subject to this Article, by Order approve any code of practice for the purposes of this Law or the Discrimination Law.[7]

(2) Before approving a code of practice, the Minister shall publish a notice in the Jersey Gazette –

(a) stating that a copy of the code of practice will be available for inspection during normal working hours, free of charge, at a place specified in the notice;

(b) specifying a period during which it will be available for inspection (being a reasonable period of not less than 21 days, beginning after the notice is published); and

(c) explaining that anyone may make representations in writing to the Minister in respect of the code of practice at any time before the expiry of the 7 days following the period for inspection,

and the Minister shall make a copy of the code of practice available accordingly for inspection.

(3) Before approving the code of practice, the Minister shall also consult –

(a) the Jersey Advisory and Conciliation Service;

(b) the Employment Forum; and

(c) such persons as the Minister considers will be affected, or representatives of such persons.

(4) The Minister shall not proceed to decide whether or not to approve the code of practice until the time limit under paragraph (2) for making representations has elapsed.

(5) In deciding whether or not to approve the code of practice, the Minister shall consider all representations made under this Article in respect of the proposal.

(6) An Order approving a code of practice shall not come into force before the expiry of the period of 28 days commencing on the day on which it is laid before the States.

2B Failure to comply with approved code of practice[8]

(1) A failure on the part of any person to observe any provision of an approved code of practice issued under this Law or the Discrimination Law shall not of itself render the person liable to any proceedings.[9]

(2) In any proceedings before a court or before the Tribunal an approved code of practice shall be admissible in evidence.

(3) If it appears to the court or the Tribunal that any provision in the approved code of practice is relevant to any question arising in the proceedings, the

court or the Tribunal shall take that provision into account in determining the question.

PART 2

EMPLOYMENT PARTICULARS

3 Statement of initial terms of employment

(1) Subject to paragraph (6), not later than 4 weeks after an employee begins employment, the employer shall give to the employee a written statement of the terms of his or her employment.

(2) A statement given under paragraph (1) shall be signed by the employer, or if the employer is a body corporate, a limited liability company or a partnership, by an officer or partner authorized to sign such statements, and shall contain the following particulars –

(a) the names of the employer and employee;

(b) the date when the employment began;

(c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which, in accordance with Articles 57 and 58, counts towards that period);

(d) the scale or rate of remuneration or the method of calculating remuneration;

(e) the day on which, and the intervals at which, remuneration is paid (that is, weekly, monthly or other specified intervals) and the method of payment;

(f) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours);

(g) any terms and conditions 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 sick pay,

(iii) pensions and pension schemes,

(iv) maternity leave,

(v) redundancy, and

(vi) disciplinary and grievance procedures;

(h) the length of notice which the employee is obliged to give and entitled to receive to terminate his or her contract of employment;

(i) where the employment is not intended to be permanent –

(i) the period for which it is expected to continue,

(ii) if it is for a fixed term, the date when it is to end,

(iii) any event, the occurrence or non-occurrence of which will terminate it, or

(iv) any task or project, the completion of which will terminate it;

(j) the title of the job which the employee is employed to do or a brief description of the work for which he or she is employed;

(k) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer;

(l) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made; and

(m) where the employee is required to work outside Jersey for a continuous period of more than 4 weeks –

(i) the period for which the employee is to work outside Jersey,

(ii) the currency in which remuneration is to be paid while the employee is working outside Jersey,

(iii) any additional remuneration payable to the employee, and any benefits to be provided to or in respect of the employee, by reason of his or her being required to work outside Jersey, and

(iv) any terms and conditions relating to the employee's return to Jersey.[10]

(3) A statement under paragraph (1) may refer the employee for particulars of any of the matters specified in paragraph (2)(g) to the provisions of some other document which the employee has reasonable opportunity of reading in the course of his or her employment or which is made reasonably accessible to the employee in some other way.

(4) A statement under this Article may refer the employee for particulars of either of the matters specified in paragraph (2)(h) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which the employee has reasonable opportunity of reading in the course of his or her employment or which is made reasonably accessible to the employee in some other way.

(5) Paragraph (2)(g)(iii) shall not apply to an employee of a body or authority if –

(a) the employee's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any enactment; and

(b) any such provision requires the body or authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.

(6) Where after the beginning of an employee's employment the employee is to begin to work outside Jersey for a period of more than 4 weeks, the statement under paragraph (1) shall be given to the employee not later than the time when he or she leaves Jersey in order to begin so to work.

(7) A statement under paragraph (1) shall be given to a person even if his or her employment ends before the end of the period within which the statement is required to be given.

4 Changes in terms of employment

(1) If, after the date on which a statement is given under Article 3, there is a change in the matters, particulars of which are required by Article 3 to be included or referred to in a statement under Article 3, the employer shall give to the employee a written statement containing particulars of the change.

(2) A statement under this Article shall be given at the earliest opportunity and, in any event, not later than –

(a) 4 weeks after the change in question; or

(b) where that change results from the employee being required to work outside Jersey for a period of more than 4 weeks, the time when the employee leaves Jersey in order to begin so to work, if that is earlier.

(3) A statement under this Article may refer the employee for particulars of any of the matters specified in Article 3(2)(g) to the provisions of some other document which the employee has reasonable opportunity of reading in the course of his or her employment or which is made reasonably accessible to the employee in some other way.

(4) A statement under this Article may refer the employee for particulars of either of the matters specified in Article 3(2)(h) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which the employee has reasonable opportunity of reading in the course of his or her employment or which is made reasonably accessible to the employee in some other way.

(5) If, after an employer has given to an employee a written statement under Article 3 –

(a) the name of the employer is changed, without any change in the identity of the employer; or

(b) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken,

and there is no change 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 or identity, shall give to the employee a written statement notifying the employee of the change.

5 Power to amend requirement of particulars

The States may by Regulations add to, amend or delete any of the particulars required by Article 3(2) to be contained in a statement under Article 3.

6 Exclusivity clauses in zero hours contracts not enforceable [11]

(1) A provision of a zero hours contract is not enforceable by an employer against an employee if it –

(a) prohibits the employee from being employed by another employer; or

(b) requires the employee to have the employer's consent to be employed by another employer.

(2) In this Article "zero hours contract" means a contract of employment where the employee may work for the employer from time to time but there is no minimum requirement for the employee to do any work for the employer.

7 References to the Tribunal

(1) Where an employer does not give an employee a statement as required by Article 3 or 4 or where the statement the employer gives does not comply with what is required, the employee may require a reference to be made to the Tribunal to determine –

(a) what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned; and

(b) whether any compensation should be paid by the employer to the employee (and if so, subject to Article 8(1)(b), the amount of such compensation) by reason of the employer's failure to comply with such requirements.[12]

(2) Where –

(a) a statement purporting to be a statement under Article 3 or 4 has been given to an employee; and

(b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the employee may require the question to be referred to and determined by the Tribunal.

(3) The Tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made –

(a) before the end of the period of 8 weeks beginning with the date on which the employment ceased; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 8 weeks.

8 Determination of references

(1) Where, on a reference under Article 7(1), the Tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 3 or 4 –

(a) the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Tribunal; and

(b) the Tribunal may order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.[13]

(2) On determining a reference under Article 7(2) relating to a statement purporting to be a statement under Article 3 or 4, the Tribunal may –

(a) confirm the particulars as included or referred to in the statement given by the employer;

(b) amend those particulars; or

(c) substitute other particulars for them,

as the Tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the Tribunal.

(3) The payment of a fine by the employer upon conviction for an offence under Article 9 shall be additional to, and shall not be taken as discharging, any liability of the employer to pay compensation under this Article.[14]

9 Offences under this part

(1) A person who, being an employer –

(a) fails to give to a person he or she employs a written statement of the terms of the person's employment in accordance with Article 3; or

(b) where there is a change in the matters included or referred to in a statement under Article 3, fails to give a person he or she employs a written statement containing particulars of the change in accordance with Article 4,

shall be guilty of an offence and liable to a fine of level 3 on the standard scale.[15]

(2) On the issue of a summons, or on the arrest and charge of a person, in respect of an offence under paragraph (1) the Centenier responsible shall notify the Minister and the Tribunal in writing of the fact.[16]

(3) Where notification under paragraph (2) has been received the Tribunal shall stay any proceedings which may have been or may be started under Article 7 until the criminal proceedings have been concluded and the time available for an appeal has expired.

PART 3

MINIMUM REST PERIODS AND ANNUAL LEAVE

10 Rest period[17]

(1) An employee is entitled to –

(a) an uninterrupted rest period of no less than 20 minutes in each continuous period of no less than 6 hours during which the employee works for his or her employer; and

(b) subject to paragraph (2), an uninterrupted rest period of no less than 24 hours in each 7-day period during which the employee works for his or her employer.[18]

(2) If the employer and the employee so agree in a relevant agreement, an employee shall be entitled to either –

(a) 2 uninterrupted rest periods each of not less than 24 hours in each 14-day period during which the employee works for his or her employer; or

(b) one uninterrupted rest period of not less than 48 hours in each such 14-day period,

in place of the entitlement provided for in paragraph (1)(b).[19]

(2A) For the purposes of paragraphs (1) and (2), a rest period shall be an uninterrupted rest period if the employer –

(a) does not require the employee to be available to the employer for the purpose of undertaking a work-related action; and

(b) for a rest period under paragraph (1)(b) does not require the employee to attend the employer's workplace or be at or near that workplace.[20]

(2B) Where an employee –

(a) has been prevented by the employer, whether by the employer's refusal or otherwise, from taking a rest period to which the employee is entitled under paragraph (1)(b) or (2); or

(b) has taken a rest period which has not been an uninterrupted rest period under paragraph (1)(b) within the meaning given by paragraph (2A),

the employer shall compensate the employee by making available to that employee an uninterrupted rest period within 14 days beginning on the day that the employee's rest period was due to be taken or, as the case may be, was interrupted, in addition to any rest period to which the employee would normally be entitled in that 14 day period.[21]

(2C) Where the employer prevents the employee from exercising the entitlement conferred by paragraph (1) or (2) (whether by refusal or otherwise, and including by failing to compensate the employee in accordance with paragraph (2B)) the employee may present a complaint to the Tribunal that the employer has so acted.[22]

(2D) The Tribunal shall not consider a complaint under paragraph (2C) in a case where the employment to which the complaint relates has ceased unless an application requiring the reference to be made was made –

(a) before the end of the period of 8 weeks beginning with the date on which the employment ceased; or

(b) within such further period as the Tribunal considers reasonable, in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of 8 weeks.[23]

(2E) Where the Tribunal finds a complaint presented under paragraph (2C) to be well-founded, the Tribunal may order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.[24]

(3) For the purposes of paragraph (1)(a) a continuous period is taken to begin when the employee begins working on any particular day.[25]

(3A) For the purposes of paragraphs (1)(b) and (2), a 7-day period or a 14-day period is taken to begin –

(a) at such times on such days as may be specified for the purposes of this Article in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply, at the start of each week or every other week respectively.[26]

(4) In a case where, in accordance with paragraph (3), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular employee shall be taken to begin –

(a) if the employee's employment began on or before the 1st July 2005, on the 1st July 2005; or

(b) if the employee's employment begins after the 1st July 2005, at the start of the week in which that employment begins.

(5) For the purposes of paragraphs (3) and (4), a week starts at midnight between Saturday and Sunday.

(6) The States may amend this Article by Regulations.[27]

11 Entitlement to annual leave

(1) Subject to paragraphs (3) and (6), an employee shall be entitled in each leave year –

(a) to a period of leave of 3 weeks or to such other period as may be specified in a relevant agreement, whichever shall be the longer; and

(b) to leave –

(i) on Christmas Day, Good Friday and all public or bank holidays under the Public Holidays and Bank Holidays (Jersey) Law 1951, or

(ii) in substitution for the leave to which the employee is entitled under clause (i) on such days as the employee may in his or her discretion decide or, where provided for in a relevant

agreement, on such days as may be so provided, which days shall not be less in total than the total number of the days specified in clause (i) in respect of the leave year in question on which the employee has been required by his or her employer to work.[28]

(2) An employee's leave year, for the purposes of this Article, shall begin –

(a) on such date during the calendar year as may be provided for in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which an employee's employment begins is later than the date on which (by virtue of a relevant agreement) the employee's first leave year begins, the leave to which he or she is entitled in that leave year shall be a proportion of the period applicable under paragraph (1)(a) equal to the proportion of that leave year remaining on the date on which his or her employment begins.

(4) Subject to paragraph (5), where by virtue of paragraph (2)(b) or (3) the period of leave to which an employee is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(5) Paragraph (4) shall apply only where the employee in question has been employed by that employer for a period of 28 days or longer.

(6) The States may by Regulations amend the period specified in paragraph (1)(a).

12 Dates on which leave is taken

(1) The Minister may by Order prescribe the period of notice to be given by and to employers in relation to the taking of annual leave by employees in the event that such matters are not included in a relevant agreement.

(2) Before the Minister may make an Order under paragraph (1) the Minister shall consult the Employment Forum and such other organisations as appear to the Minister to be representative of employers and employees in Jersey.

13 Payment in respect of periods of leave

(1) An employee shall be entitled to be paid in respect of any period of leave to which the employee is entitled under Article 11, at the rate of a week's pay in respect of each week of leave, reduced pro rata for shorter periods of leave.

(2) Schedule 1 shall apply for the purpose of determining the amount of a week's pay for the purposes of this Article.

(3) A right to payment under paragraph (1) shall not affect a right of an employee to remuneration under his or her contract of employment.

(4) Remuneration paid to an employee under his or her contract of employment in respect of a period of leave shall go towards discharging any liability of the employer to make payments to the employee under this Article in respect of that period; and, conversely, payment of remuneration to an employee under this Article in respect of a period goes towards discharging any liability of the employer to pay remuneration to the employee under his or her contract of employment in respect of that period.

14 Compensation related to entitlement to leave

(1) This Article shall apply where –

(a) an employee's employment is terminated during the course of his or her leave year; and

(b) on the date on which the termination takes effect (the "termination date"), the proportion the employee has taken of the leave to which he or she is entitled in the leave year under Article 11(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the employee is less than the proportion of the leave year which has expired, the employee's employer shall make the employee a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be –

(a) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the employee under Article 13 in respect of a period of leave determined according to the formula –

(A × B) - C

where –

A is the period of leave to which the employee is entitled under Article 11(1),

B is the proportion of the employee's leave year which expired before the termination date, and

C is the period of leave taken by the employee between the start of the leave year and the termination date; or

(b) such sum as may be specified in a relevant agreement,

whichever is the greater.

(4) Where the proportion of leave taken by the employee exceeds the proportion of the leave year which has expired, the employee shall compensate his or her employer by a payment in respect of the excess leave taken in accordance with paragraph (5).

(5) The payment due under paragraph (4) shall be –

(a) where there are no provisions of a relevant agreement which apply, a sum equal to the amount which would be due to the employee under Article 13 in respect of a period of leave determined according to the formula –

$$\mathbf{X - (Y \times Z)}$$

where –

X is the period of leave taken by the employee in the employee's leave year in question,

Y is the period of leave to which the employee is entitled under Article 11(1), and

Z is the proportion of the employee's leave year which expired before the termination date; or

(b) such sum as may be specified in a relevant agreement,

whichever is the less.

15 Entitlements under other provisions

Where during any period an employee is entitled to a rest period or annual leave both under a provision of this Part and under a separate provision (including a provision of a relevant agreement) or another enactment, the employee may not exercise the 2 rights separately, but may, in taking a rest period or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

PART 3A[29]

FLEXIBLE WORKING

15A Entitlement to request change in the terms and conditions of employment

(1) An employee may apply to his or her employer for a change in his or her terms and conditions of employment if the change relates to –

(a) the hours the employee is required to work;

(b) the times when the employee is required to work; or

(c) the place where the employee is required to work. [30]

(2) An application under this Article must –

(a) state that it is such an application;

(b) specify the change applied for and the date on which it is proposed the change should become effective; and

(c)

(d) state the reason for making the application. [31]

(3) [32]

(4) [33]

(5) An employee may not make a further application under paragraph (1) where he or she has made such an application in the previous 12 months.

(6) Where an employee has any right, arising under the employee's contract of employment or otherwise, which corresponds to the entitlement conferred by paragraph (1) to make an application for a change in his or her terms and conditions of employment –

(a) the employee may not exercise both the entitlement conferred by paragraph (1) and the corresponding right, but may, in requesting any change to his or her terms or conditions of employment, rely on whichever of the entitlement, or the right, is the more favourable; and

(b) if he or she relies, under sub-paragraph (a), upon such a corresponding right as more favourable, the provisions relating to an application under this Article shall apply, subject to such modifications as may be necessary, in relation to that right as though the exercise of it were such an application.[34]

15B Employer's duties in relation to application under Article 15A

(1) Subject to paragraphs (2) and (6), an employer to whom an application under Article 15A is made –

(a) shall hold a meeting, at a time convenient to the employer and employee, to discuss the application with the employee within 28 days after the day on which the application is made;

(b) may agree the change in the terms or conditions applied for under Article 15A or agree different terms and conditions of the employee's employment to those applied for; and

(c) shall give the employee notice of his or her decision on the application within 6 weeks after the day on which the application is made.

(2) Paragraph (1) does not apply where the employer agrees to the application and gives notice of his or her decision to the employee within 28 days after the day on which the application is made.

(3) Where the employer's decision is to agree to a change in the terms and conditions of the employee's employment, the notice shall specify the agreed change and state the date on which the change is to take effect.

(4) Where the employer's decision is to refuse the application the notice shall –

(a) state which of the grounds for refusal specified in paragraph (5) are considered by the employer to apply;

(b) contain a sufficient explanation as to why those grounds apply in relation to the application; and

(c) set out the appeal procedure for which provision is made in Article 15C.

(5) An employer may only refuse an application made under Article 15A if he or she considers that any of the following grounds are satisfied –

(a) the granting of the application would create a burden of additional costs;

(b) the application would have a detrimental effect on the employer's ability to meet customer demand;

(c) the employer would be unable to re-organize work among existing staff or recruit additional staff;

(d) the granting of the application would have a detrimental effect on the quality or performance of the employer's business;

(e) there would be insufficient work for the employee to do during the periods the employee proposes to work; or

(f) the granting of the application would have a detrimental effect on the employer's planned staffing changes. [35]

(6) Where the individual who would ordinarily consider an application is absent from work on the day on which the application is made, the periods referred to in paragraphs (1) and (2) shall not commence until the day on which the individual returns to work, or 28 days after the day on which the application is made, whichever is the sooner.

15C Appeal against employer's decision

(1) An employee is entitled to appeal against his or her employer's decision to refuse an application under Article 15A, or the terms upon which the employer has granted the application, by giving notice of appeal to the employer within 14 days after the day on which notice of the decision is given, setting out the grounds of appeal.

(2) Subject to paragraphs (3) and (5), within 14 days after the employee's notice under paragraph (1) is given, the employer shall hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the appeal.

(3) Paragraph (2) does not apply where, within 14 days after the day on which notice under paragraph (1) is given, the employer –

(a) upholds the appeal; and

(b) notifies the employee in writing of his or her decision, specifying any change in the terms and conditions of the employee's employment agreed to and stating the date from which the change in the terms and conditions of the employee's employment is to take effect.

(4) Where a meeting is held to discuss the appeal, the employer shall notify the employee of his or her decision on the appeal within 14 days after the day of the meeting.

(5) Where the individual who would ordinarily consider the appeal is absent from work on the day on which the notice of appeal is given, the period referred to in paragraph (2) shall not commence until the day the individual returns to work, or 28 days after the day on which the notice of appeal is given, whichever is the sooner.

(6) The rights conferred by Article 78A and 78B apply in respect of any meeting held under paragraph (2) as they do in respect of disciplinary and grievance hearings.

15D Applications, notices and appeals under Part 3A

(1) Unless the contrary is proved, an application under Article 15A is taken as having been made on the day the application is received by the employer.

(2) An employer and an employee may agree to an extension of any of the periods referred to in this Part.

(3) Every notice or agreement given under this Part shall be in writing.

15E Complaints to Tribunal

(1) An employee who makes an application under Article 15A may present a complaint to the Tribunal –

(a) that his or her employer has failed in relation to the application to comply with any requirement in Article 15B, 15C or 15D(3); or

(b) that a decision by his or her employer to refuse the application was based on incorrect facts.

(2) No complaint under this Article may be made in respect of an application which has been disposed of by agreement or withdrawn.

(3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this Article may be made unless or until the employer –

(a) notifies the employee of a decision under Article 15C(3)(b) to reject the application on appeal; or

(b) breaches any of the requirements of Articles 15B(1), 15C or 15D(3).

(4) The Tribunal shall not consider a complaint under this Article unless the complaint is presented –

(a) before the end of the period of 8 weeks beginning with the relevant date; or

(b) within such further period as the Tribunal considers reasonable in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

(5) In paragraph (4)(a), the reference to the relevant date is –

(a) in the case of a complaint under paragraph (3)(a), to the date on which the employee is notified of the decision on the appeal; and

(b) in the case of a complaint under paragraph (3)(b), to the date on which the breach concerned was committed.

15F Remedies

Where the Tribunal finds a complaint presented under Article 15E well-founded it shall make a declaration to that effect and may –

(a) make an order for reconsideration of the application; and

(b) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.

PART 3B[36]

RIGHTS IN RESPECT OF PREGNANCY AND BREASTFEEDING

15G Entitlement to leave during pregnancy or breastfeeding

(1) This Article applies in respect of an employee who notifies her employer in writing that she is pregnant, has given birth within the previous 6 months, or is breastfeeding.

(2) An employee in respect of whom this Article applies is entitled, subject to paragraph (8), to leave for any period during which it is not reasonably practicable –

(a) for the employee to continue to fulfil any usual requirement of her employment, according to an assessment of significant risks undertaken in accordance with Article 3 of the Health and Safety at Work (Jersey) Law 1989; and

(b) for the employer to allocate the employee to other duties, alter her duties, or make appropriate changes to the working environment to enable her to continue working.

(3) Entitlement to leave under this Article is in addition to, and does not derogate from, any other entitlement of the employee to rest periods or to leave under this Part or Parts 3 and 3A.

(4) Subject to paragraph (9), an employee is entitled to be paid for any period of leave to which she is entitled under this Article, at the rate of a week's pay determined in accordance with Schedule 1 and reduced pro rata.

(5) The right to payment of remuneration under paragraph (4) does not affect a right of the employee to remuneration under her contract of employment.

(6) Any remuneration paid to an employee under her contract of employment in respect of a period of leave under this Article goes towards discharging any liability of the employer, under paragraph (4), to pay remuneration in respect of that period, and conversely, any payment of remuneration under paragraph (4) in respect of that period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.

(7) Where during any period an employee is entitled to leave both under this Article and under a separate provision (including a provision of a relevant agreement) or another enactment, the employee may not exercise those rights separately but may, in taking leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

(8) An employer is not obliged to grant leave under this Article –

(a) where the employee has notified the employer that she is pregnant and the employee has failed, within a reasonable time of being

requested in writing to do so, to provide a certificate of her pregnancy, from –

(i) a registered medical practitioner,

(ii) a registered midwife, or

(iii) a registered nurse;

(b) where the employer knows that the employee is not, or is no longer, a new or expectant mother;

(c) where the employer cannot establish that the employee remains a new or expectant mother.

(9) An employer is not obliged to make payment for any period of leave under this Article where –

(a) the employer has offered the employee suitable alternative employment at the same rate of pay as her existing employment; and

(b) the employee has unreasonably refused that alternative employment.

(10) Where the employee's employment terminates –

(a) after the commencement of a period of leave under this Article; but

(b) before the time when (apart from this paragraph) that period would end,

the period of leave ends on the date of the termination.

15H Entitlement to request temporary variation of terms and conditions of employment for the purposes of breastfeeding

(1) An employee who is breastfeeding is entitled to apply to her employer for a variation of her terms and conditions of employment, if the variation relates to –

(a) the hours during which the employee is required to work;

(b) the times when the employee is required to work; or

(c) the place where the employee is required to work,

and is solely for the purpose of enabling her to breastfeed.

(2) An application under this Article must –

(a) state the purpose for which the variation is sought; and

(b) specify the variation applied for and the period for which it is proposed to be effective.

(3) Where an employee has any right, arising under her contract of employment or otherwise, which corresponds to the entitlement conferred by paragraph (1) to make an application for a variation in her terms and conditions of employment –

(a) the employee may not exercise both the entitlement conferred by paragraph (1) and the corresponding right, but may, in requesting a variation, rely on whichever of the entitlement, or the right, is the more favourable; and

(b) if she relies, under sub-paragraph (a), on the corresponding right as more favourable, the provisions of Article 15I relating to an application under this Article apply, subject to such modifications as may be necessary, in relation to that right as though the exercise of it were such an application.

(4) Entitlement to request a variation of terms and conditions of employment under this Article is in addition to, and does not derogate from, an employee's right to request a change in those terms and conditions under Article 15A.

15I Employer's duties in relation to variation under Article 15H

(1) Subject to paragraph (2), an employer to whom an application under Article 15H is made –

(a) must hold a meeting, at a time convenient to the employer and employee, to discuss the application within the period of 7 days beginning with the day on which the application is made;

(b) may agree to the variation as requested by the application, or vary the employee's terms and conditions in such other reasonable manner as may be agreed between the employer and the employee; and

(c) must give the employee notice of his or her decision on the application, within the period of 14 days beginning with the day on which the application is made.

(2) Paragraph (1) does not apply where the employer –

(a) agrees to the variation as requested by the application; and

(b) gives notice of his or her decision to the employee, within the period of 7 days beginning with the day on which the application is made.

(3) Where the employer's decision is to agree to a variation in the terms and conditions of the employee's employment, the notice under paragraph (1)(c) or (2)(b), as the case may be, must specify the agreed variation and the period for which it is to be effective.

(4) Where the employer's decision is to refuse the application, a notice under paragraph (1)(c) must –

(a) specify the grounds for the refusal; and

(b) set out the appeal procedure for which provision is made by Article 15J.

(5) If the period of the variation falls within the period of 52 weeks beginning with the birth of the child, paragraphs (1), (2), (4) and (5) of Article 55C (right to remuneration during time off to receive ante-natal care) apply in relation to an employee taking time off for breastfeeding in the same way as they would apply if the employee were taking time off for the purpose permitted by that Article.

15J Appeal against refusal of variation

(1) An employee is entitled to appeal to her employer against –

(a) her employer's decision to refuse an application under Article 15H; or

(b) a failure by her employer to reach agreement as to a variation requested by such an application.

(2) An appeal under this Article is made by giving notice of appeal to the employer –

(a) within the period of 7 days beginning with the day on which notice of the decision is given, or the failure occurs; and

(b) setting out the grounds of appeal.

(3) Subject to paragraph (4), within the period of 7 days beginning with the date on which notice of appeal is given, the employer must hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the appeal.

(4) Paragraph (3) does not apply where, within the period of 7 days beginning with the date on which notice of appeal is given, the employer –

(a) having considered the appeal, grants the application (whether unconditionally or by way of an agreed variation of the employee's terms and conditions); and

(b) notifies the employee of the decision on the appeal, specifying any agreed variation and the period for which it is to be effective.

(5) Where a meeting is held under paragraph (3), the employer must give the employee notice of his or her decision within the period of 7 days beginning with the date of the meeting.

(6) The rights conferred by Article 78A and 78B (rights to be represented, and to complain to the Tribunal) apply in respect of any meeting under paragraph (3) as they do in respect of disciplinary and grievance hearings.

15K Employer's duty to provide facilities for breastfeeding

(1) Paragraph (2) applies to an employer of an employee who –

(a) continues to breastfeed, following her return to work; and

(b) gives notice to her employer that she requires facilities to be provided in the workplace for that purpose.

(2) The employer must take all reasonable steps to provide facilities for breastfeeding in the employee's workplace, and in determining what steps are reasonable in the circumstances, the matters to be considered include (but are not limited to) –

(a) the extent to which any steps are, or would be if taken, effective to provide suitable facilities;

(b) the extent to which any steps are, or would be if taken, practical;

(c) the cost of any steps which could be taken;

(d) the extent of the financial, administrative and other resources available to the employer, including any provided by a third party, for the purpose of taking such steps;

(e) the characteristics of the employer such as the nature and size of the employer's business.

15L Applications, notices and appeals under Part 3B

(1) Unless the contrary is proved, an application under Article 15H or an appeal under Article 15J is taken as having been made on the day the application, or (as the case may be) the notice of appeal, is received by the employer.

(2) An employer and an employee may agree to an extension of any of the periods referred to in this Part.

(3) A notice or agreement under this Part must be in writing.

15M Complaints to Tribunal for breach of requirement under Part 3B

(1) An employee may present a complaint to the Tribunal that her employer has contravened a requirement under this Part.

(2) No complaint under this Article may be made –

(a) in respect of an application which has been disposed of by agreement or withdrawn; or

(b) unless or until the employer –

(i) notifies the employee of a decision under Article 15J(4)(b) to reject the application on appeal, or

(ii) contravenes any of the requirements of Articles 15G, 15I, 15J, 15K or 15L.

(3) The Tribunal must not consider a complaint under this Article unless the complaint is presented –

(a) before the end of the period of 8 weeks beginning with the relevant date; or

(b) within such further period as the Tribunal considers reasonable in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period.

(4) In paragraph (3)(a), reference to the "relevant date" is –

(a) in the case of a failure to pay remuneration in respect of leave in accordance with Article 15G(4), or in respect of time off for breastfeeding in accordance with Article 15I(5), the date which is 28 days after the date on which the employee would normally expect to receive remuneration for the period of leave in question;

(b) in the case of a refusal to grant leave, or to make appropriate changes to the employee's work or working environment, under and in accordance with Article 15G, the date of the refusal;

(c) in the case of a failure to give notice of a decision, under or in accordance with Article 15I(1)(c) or 15J(5), the date by which such notice should have been given;

(d) in the case of a failure to provide facilities for breastfeeding in accordance with Article 15K, the date on which notice was given under paragraph (1)(b) of that Article;

(e) in any other case, the date of the contravention complained of.

15N Remedies for breach of Part 3B

Where the Tribunal finds a complaint presented under Article 15M well-founded, it must make a declaration to that effect and may –

(a) make an order requiring the employer to reconsider an application under Article 15H, or a notice under Article 15K;

(b) order the employer to pay remuneration due to the employee under Article 15G(4) or 15I(5); and

(c) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay at the appropriate weekly rate, calculated in accordance with Schedule 1.

PART 4

MINIMUM WAGE

Entitlement to the minimum wage

16 Employees to be paid at least the minimum wage

(1) A person who qualifies for the minimum wage shall be remunerated by his or her employer in respect of his or her work in any pay reference period at a rate which is not less than the minimum wage.

(2) A person qualifies for the minimum wage if he or she is an individual who –

(a) is an employee;

(b) is working, or ordinarily works, in Jersey or, subject to paragraph (5), in the territorial waters of Jersey, under his or her contract; and

(c) has ceased to be of compulsory school age.

(3) The minimum wage shall be such hourly rate as may from time to time be prescribed.

(4) For the purposes of this Law a "pay reference period" is such period as may be prescribed for the purpose.

(5) Paragraphs (1) to (4) are subject to the foregoing and following provisions of this Law.

(6) The States may by Regulations amend the classes of person who qualify under paragraph (2) for the minimum wage.

(7) No provision shall be made under paragraph (6) which treats persons differently in relation to –

(a) different areas of Jersey;

(b) different sectors of employment;

(c) undertakings of different sizes;

(d) different occupations; or

(e) different racial groups or genders.

(8) In paragraph (7) "racial groups" means a group of persons defined by reference to colour, race, nationality, or ethnic or national origins.

Regulations relating to the minimum wage

17 Determination of hourly rate of remuneration

(1) The States may by Regulations make provision for determining what is the hourly rate at which a person is to be regarded for the purposes of this Law as remunerated by his or her employer in respect of his or her work in any pay reference period.

(2) The Regulations may make provision for determining the hourly rate in cases where –

(a) the remuneration, to the extent that it is at a periodic rate, is at a single rate;

(b) the remuneration is, in whole or in part, at different rates applicable at different times or in different circumstances;

(c) the remuneration is, in whole or in part, otherwise than at a periodic rate or rates;

(d) the remuneration consists, in whole or in part, of benefits in kind; or

(e) the employee is a trainee.

(3) The Regulations may make provision with respect to –

(a) circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated;

(b) the treatment of periods of paid or unpaid absence from, or lack of, work and of remuneration in respect of such periods; and

(c) circumstances in which a person is to be treated as a trainee for the purposes of paragraph (2)(e).

(4) The provision that may be made by virtue of paragraph (3)(a) includes provision for or in connection with –

(a) treating a person as, or as not, working for a maximum or minimum time, or for a proportion of the time, in any period; and

(b) determining any matter to which that paragraph relates by reference to the terms of an agreement.

(5) The Regulations may make provision with respect to –

(a) what is to be treated as, or as not, forming part of a person's remuneration, and the extent to which it is to be so treated;

(b) the valuation of benefits in kind;

(c) the treatment of deductions from earnings; and

(d) the treatment of any charges or expenses which a person is required to bear.

(6) The Regulations may make provision with respect to –

(a) the attribution to a period, or the apportionment between 2 or more periods, of the whole or any part of any remuneration or work, whether or not the remuneration is received or the work is done within the period or periods in question;

(b) the aggregation of the whole or any part of the remuneration for different periods; and

(c) the time at which remuneration is to be treated as received or accruing.

(7) Paragraphs (2) to (6) are without prejudice to the generality of paragraph (1).

(8) No provision shall be made under this Article which treats the same circumstances differently in relation to –

(a) different areas of Jersey;

(b) different sectors of employment;

(c) undertakings of different sizes;

(d) persons of different occupations; or

(e) persons of different racial groups or gender.

(9) In paragraph (8) "racial groups" means a group of persons defined by reference to colour, race, nationality, or ethnic or national origins.

The Employment Forum

18 The first Regulations and Orders: referral to the Employment Forum

(1) Before the Minister makes an Order under Article 16(3) or (4) or the States make Regulations under Article 16(6), or Article 17, the Minister shall refer the matters specified in paragraph (2) to the Employment Forum for their consideration.

(2) The matters referred to in paragraph (1) are –

(a) what single hourly rate should be prescribed under Article 16(3) as the minimum wage;

(b) what period or periods should be prescribed under Article 16(4);

(c) what method or methods should be used for determining under Article 17 the hourly rate at which a person is to be regarded as remunerated for the purposes of this Law; and

(d) whether any, and if so what, amendments should be made to the classes of person who qualify under Article 16(2) for the minimum wage.

(3) Where matters are referred to the Employment Forum under paragraph (1), the Forum shall, after considering those matters, make a report to the Minister which shall contain the Forum's recommendations about each of those matters.

(4) If, following the report of the Employment Forum under paragraph (3), the Minister decides –

(a) not to make an Order, or not to recommend the States to make any Regulations, implementing the Forum's recommendations;

(b) to make an Order, or to recommend the States to make Regulations, implementing only some of the Forum's recommendations;

(c) to make an Order under Article 16(3) prescribing a single hourly rate which is different from the rate recommended by the Forum;

(d) to make an Order, or to recommend the States to make Regulations, which in some other respect differ from the recommendations of the Forum; or

(e) to make an Order, or to recommend the States to make Regulations, which do not relate to a recommendation of the Forum,

the Minister shall lay a report before the States containing a statement of the reasons for the decision.

(5) If the Employment Forum fail to make their report under paragraph (3) within the time allowed for doing so under Article 20, any power of the Minister to make an Order or of the States to make Regulations under this Law shall be exercisable as if paragraph (1) had not been enacted.

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19 Referral of matters to the Employment Forum at any time

(1) The Minister may at any time refer to the Employment Forum such matters relating to this Law as the Minister thinks fit.

(2) Where matters are referred to the Employment Forum under paragraph (1), the Forum shall, after considering those matters, make a report to the Minister which shall contain the Forum's recommendations about each of those matters.

(3) If on a referral under this Article –

(a) the Minister seeks the opinion of the Employment Forum on a matter falling within Article 18(2);

(b) the Forum's report under paragraph (2) contains recommendations in relation to that matter; and

(c) implementation of any of those recommendations involves the exercise of any power to make Regulations under Articles 16 to 19,

Article 18(4) shall apply in relation to the report, so far as relating to the recommendations falling within sub-paragraph (c), as it applies in relation to a report under Article 18(3).

(4) If on a referral under this Article –

(a) the Minister seeks the opinion of the Employment Forum on any matter falling within Article 18(2); but

(b) the Forum fail to make their report under paragraph (2) within the time allowed under Article 20,

the States may make Regulations and the Minister may make Orders under Articles 16 to 19 as if the opinion of the Forum had not been sought in relation to that matter.

20 Referrals to, and reports of, the Employment Forum: supplementary

(1) This Article applies where matters are referred to the Employment Forum under Article 18 or 19.

(2) The Minister may by notice require the Employment Forum to make their report within such time as may be specified in the notice.

(3) The time allowed to the Employment Forum for making their report may be extended by further notice given to them by the Minister.

(4) Before arriving at the recommendations to be included in their report, the Employment Forum shall consult –

(a) such organisations representative of employers as they think fit;

(b) such organisations representative of employees as they think fit; and

(c) if they think fit, any other body or person.

(5) In considering what recommendations to include in their report, the Employment Forum –

(a) shall have regard to the effect of this Law on the economy of Jersey as a whole and on competitiveness; and

(b) shall take into account any additional factors which the Minister specifies in referring the matters to them.

(6) The report of the Employment Forum shall –

(a) identify the members of the Forum making the report;

(b) explain the procedures adopted in respect of consultation, the taking of evidence and the receiving of representations;

(c) set out the reasons for their recommendations; and

(d) if the Minister has specified any additional factor to be taken into account under paragraph (5)(b), state that they have taken that factor into account in making their recommendations.

(7) The Minister shall –

(a) lay a copy of any report of the Employment Forum before the States; and

(b) arrange for the report to be published.

(8) In this Article –

"recommendations" means the recommendations required to be contained in a report under Article 18(3) or 19(2); and

"report" means the report which the Employment Forum are required to make under Article 18(3) or 19(2) on the matters referred to them as mentioned in paragraph (1).

21 The Employment Forum

(1) Subject to the following provisions of this Article, the body which is to be regarded for the purposes of this Law as being the Employment Forum is the non-statutory Employment Forum.

(2) In this Law "the non-statutory Employment Forum" means the unincorporated body of persons known as "the Employment Forum" which was established by the Minister before the passing of this Law for the purpose of making recommendations relating to the establishment, application and operation of a minimum wage.

(3) The referral by the Minister to the non-statutory Employment Forum at any time before the coming into force of this Law of matters (however described) corresponding to those specified in Article 18(2) shall be treated as the referral required by Article 18(1) unless the Minister otherwise determines.

(4) The referral by the Minister to the non-statutory Employment Forum at any time before or after the coming into force of this Law, but before the appointment of the body mentioned in paragraph (9), of matters other than those mentioned in paragraph (3) shall be treated as a referral under Article 19(1) unless the Minister otherwise determines.

(5) The report of the non-statutory Employment Forum (whether made before or after the coming into force of this Law) to the Minister containing the Forum's recommendations about –

(a) the matters which are to be treated by virtue of paragraph (3) as referred under Article 18(1); or

(b) the matters which are to be treated by virtue of paragraph (4) as referred under Article 19(1),

shall be treated as the report of the Employment Forum under Article 18(3) or 19(2) on the referral in question unless the Minister, whether before or after the making of the report, makes a determination under paragraph (3) or (4) in relation to the referral.

(6) If, in the case of the matters described in paragraph (5)(a) or any particular matters such as are described in paragraph (5)(b), the Minister has, before the coming into force of this Law –

(a) requested the non-statutory Employment Forum to make their report within a specified time; or

(b) having made such a request, extended the time for making the report,

the request shall be treated as a requirement imposed under Article 20(2) and any such extension shall be treated as an extension under Article 20(3).

(7) Accordingly, if –

(a) the Minister has not made a determination under paragraph (3); and

(b) the non-statutory Employment Forum fail to make the report required by Article 18(3) within the time allowed under this Law,

Article 18(5) shall apply.

(8) The non-statutory Employment Forum shall not be regarded as the body which is the Employment Forum for the purposes of this Law in the case of any referral under Article 18(1) or 19(1) which is made after –

(a) the non-statutory Employment Forum have made their report under Article 18(3);

(b) the time allowed under this Law to the non-statutory Employment Forum for making that report has expired without the report having been made; or

(c) the Minister has made the determination under paragraph (3).

(9) The Minister may at any time appoint a body, to be known as the "Employment Forum", to discharge the functions conferred or imposed on the Employment Forum under this Law.

(10) Schedule 2 shall have effect with respect to the constitution and proceedings of the body appointed under paragraph (9).

(11) Where the Minister exercises the power conferred by paragraph (9), the body which is to be regarded for the purposes of this Law as being the Employment Forum as respects the referral of any matter to the Employment Forum by the Minister after the exercise of the power is the body appointed under that paragraph.

(12) If the Minister makes the determination under paragraph (3), the power conferred by paragraph (9) shall be exercised and the referral required by Article 18(1) shall be made to the body appointed under paragraph (9).

(13) If the Minister makes a determination under paragraph (3) or (4) –

(a) notice of the determination shall be given to the non-statutory Employment Forum; and

(b) a copy of the notice shall be laid before the States.

(14) No determination shall be made under paragraph (3) or (4) more than 12 months after the passing of this Law.

(15) A member of the body appointed under paragraph (9) shall not be liable in damages for anything done or omitted in the discharge or purported

discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

Records

22 Duty of employers to keep records

For the purposes of this Law, the Minister may by Order prescribe –

(a) the records which shall be kept by employers;

(b) the form and manner in which records prescribed under sub-paragraph (a) shall be kept; and

(c) the period for which such records shall be kept.

23 Employee's right of access to records

(1) An employee may, in accordance with the following provisions of this Article –

(a) require his or her employer to produce any relevant records; and

(b) inspect and examine those records and copy any part of them.

(2) The rights conferred by paragraph (1) shall be exercisable only if the employee believes on reasonable grounds that he or she is or may be being, or has or may have been, remunerated for any pay reference period by his or her employer at a rate which is less than the minimum wage.

(3) The rights conferred by paragraph (1) shall be exercisable only for the purpose of establishing whether or not the employee is being, or has been, remunerated for any pay reference period by his or her employer at a rate which is less than the minimum wage.

(4) The rights conferred by paragraph (1) shall be exercisable –

(a) by the employee alone; or

(b) by the employee accompanied by such other person as the employee may think fit.

(5) The rights conferred by paragraph (1) shall be exercisable only if the employee gives notice (a "production notice") to his or her employer requesting the production of any relevant records relating to such period as may be described in the notice.

(6) If the employee intends to exercise the right conferred by paragraph (4)(b), the production notice shall contain a statement of that intention.

(7) Where a production notice is given, the employer shall give the employee reasonable notice of the place and time at which the relevant records will be produced.

(8) The place at which the relevant records are produced shall be –

(a) the employee's place of work;

(b) any other place at which it is reasonable, in all the circumstances, for the employee to attend to inspect the relevant records; or

(c) such other place as may be agreed between the employee and the employer.

(9) The relevant records shall be produced –

(a) before the end of the period of 14 days following the date of receipt of the production notice; or

(b) at such later time as may be agreed during that period between the employee and the employer.

(10) In this Article –

"records" means records which the employee's employer is required to keep and, at the time of receipt of the production notice, preserve in accordance with Article 22; and

"relevant records" means such parts of, or such extracts from, any records as are relevant to establishing whether or not the employee has, for any pay reference period to which the records relate, been remunerated by the employer at a rate which is at least equal to the minimum wage.

24 Failure of employer to allow access to records

(1) A complaint may be lodged with the Tribunal by an employee on the ground that the employer –

(a) failed to produce some or all of the relevant records in accordance with Article 23(8) and (9); or

(b) failed to allow the employee to exercise some or all of the rights conferred by Article 23(1)(b) or (4)(b).

(2) Where the Tribunal finds a complaint under this Article well-founded, the Tribunal –

(a) shall make a declaration to that effect; and

(b) may make an award that the employer pays to the employee a sum not exceeding 80 times the hourly amount of the minimum wage (as in force when the award is made).

(3) The Tribunal shall not consider a complaint under this Article unless it is lodged with the Tribunal before the expiry of the period of 13 weeks following –

(a) the end of the period of 14 days mentioned in Article 23(9)(a); or

(b) in a case where a later day was agreed under Article 23(9)(b), that later day.

(4) Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under this Article to be lodged before the expiry of the period of 13 weeks mentioned in paragraph (3), the Tribunal may consider the complaint if it is lodged within such further period as the Tribunal considers reasonable.

(5) Expressions used in this Article and in Article 23 have the same meaning in this Article as they have in that Article.

25 Employer to provide employee with minimum wage statement

(1) The States may by Regulations make provision for the purpose of conferring on an employee the right to be given by his or her employer, at or before the time at which any payment of remuneration is made to the employee, a written statement.

(2) Regulations made under paragraph (1) may make provision with respect to the contents of any such statement and may, in particular, require it to contain –

(a) specified information relating to this Part or any Regulations made under it; or

(b) specified information for the purpose of assisting the employee to determine whether he or she has been remunerated at a rate at least equal to the minimum wage during the period to which the payment of remuneration relates.

(3) Any statement required to be given under this Article to an employee by his or her employer may be included in the written itemised pay statement required to be given to the employee by his or her employer under Article 51.

Enforcement

26 Non-compliance: employee entitled to additional remuneration

(1) If an employee who qualifies for the minimum wage is remunerated for any pay reference period by his or her employer at a rate which is less than the minimum wage, the employee shall be taken to be entitled under his or her contract to be paid, as additional remuneration in respect of that period, the amount described in paragraph (2).

(2) The amount referred to in paragraph (1) is the difference between –

(a) the relevant remuneration received by the employee for the pay reference period; and

(b) the relevant remuneration which the employee would have received for that period had the employee been remunerated by the employer at a rate equal to the minimum wage.

(3) In paragraph (2) "relevant remuneration" means remuneration which falls to be brought into account for the purposes of Regulations under Article 17.

27 Power of officer to issue enforcement notice

(1) If an officer acting for the purposes of this Law is of the opinion that an employee who qualifies for the minimum wage has not been remunerated for any pay reference period by his or her employer at a rate at least equal to the minimum wage, the officer may serve a notice (an "enforcement notice") on the employer requiring the employer to remunerate the employee for any such pay reference periods ending on or after the date of the notice at a rate equal to the minimum wage.

(2) An enforcement notice may also require the employer to pay to the employee within such time as may be specified in the notice the sum due to the employee under Article 26 in respect of the employer's previous failure to remunerate the employee at a rate at least equal to the minimum wage.

(3) The same enforcement notice may relate to more than one employee (and, where it does so, may be so framed as to relate to employees specified in the notice or to employees of a description so specified).

(4) A person on whom an enforcement notice is served may appeal against the notice before the end of the period of 4 weeks following the date of service of the notice.

(5) An appeal under paragraph (4) shall lie to the Tribunal.

(6) On an appeal under paragraph (4), the Tribunal shall dismiss the appeal unless it is established –

(a) that, in the case of the employee or employees to whom the enforcement notice relates, the facts are such that an officer who was aware of them would have had no reason to serve any enforcement notice on the appellant;

(b) where the enforcement notice relates to 2 or more employees, that the facts are such that an officer who was aware of them would have had no reason to include some of the employees in any enforcement notice served on the appellant; or

(c) where the enforcement notice imposes a requirement under paragraph (2) in relation to an employee –

(i) that no sum was due to the employee under Article 26, or

(ii) that the amount specified in the notice as the sum due to the employee under Article 26 is incorrect,

and in this paragraph any reference to an employee includes a reference to a person whom the enforcement notice purports to treat as an employee.

(7) Where an appeal is allowed by virtue of paragraph (6)(a), the Tribunal shall rescind the enforcement notice.

(8) If, in a case where paragraph (7) does not apply, an appeal is allowed by virtue of paragraph (6)(b) or (c) –

(a) the Tribunal shall rectify the enforcement notice; and

(b) the enforcement notice shall have effect as if it had originally been served as so rectified.

(9) The powers of the Tribunal in allowing an appeal in a case where paragraph (8) applies shall include power to rectify, as the Tribunal may consider appropriate in consequence of its decision on the appeal, any penalty notice which has been served under Article 29 in respect of the enforcement notice.

(10) Where a penalty notice is rectified under paragraph (9), it shall have effect as if it had originally been served as so rectified.

28 Non-compliance: power of officer to sue on behalf of employee

(1) If an enforcement notice is not complied with in whole or in part, an officer acting for the purposes of this Law may, on behalf of any employee to whom the notice relates, and on receipt of a written request to do so, commence other civil proceedings for the recovery, on a claim in contract, of any sums due to the employee by virtue of Article 26.

(2) The powers conferred by paragraph (1) for the recovery of sums due from an employer to an employee shall not be in derogation of any right which the employee may have to recover such sums by civil proceedings, but in the event of the employee taking such proceedings the officer shall immediately discontinue any proceedings taken by the officer on behalf of the employee under paragraph (1).[38]

29 Financial penalty for non-compliance

(1) If an officer acting for the purposes of this Law is satisfied that a person on whom an enforcement notice has been served has failed, in whole or in part, to comply with the notice, the officer may serve on that person a notice (a "penalty notice") requiring the person to pay a financial penalty to the Minister.

(2) A penalty notice shall state –

(a) the amount of the financial penalty;

(b) the time within which the financial penalty is to be paid (which shall not be less than 4 weeks from the date of service of the notice);

(c) the period to which the financial penalty relates;

(d) the matters which appear to the officer to constitute the non-compliance with the enforcement notice; and

(e) the calculation of the amount of the financial penalty.

(3) The amount of the financial penalty shall be calculated at a rate equal to twice the minimum wage in force at the date of the penalty notice, in respect of each employee to whom the failure to comply relates, for each day during which the failure to comply has continued in respect of the employee.

(4) The States may by Regulations from time to time amend the multiplier for the time being specified in paragraph (3) in relation to the minimum wage.

(5) A financial penalty under this Article shall be recoverable by action before the court by an officer acting for the purposes of this Law.

(6) Where a person has appealed under Article 27(4) against an enforcement notice and the appeal has not been withdrawn or finally determined, then, notwithstanding the appeal –

(a) the enforcement notice shall have effect; and

(b) an officer may serve a penalty notice in respect of the enforcement notice.

(7) If, in a case falling within paragraph (6), an officer serves a penalty notice in respect of the enforcement notice, the penalty notice –

(a) shall not be enforceable until the appeal has been withdrawn or finally determined; and

(b) shall be of no effect if the enforcement notice is rescinded as a result of the appeal; but

(c) subject to sub-paragraph (b) and Article 30(4) and (6)(a), as from the withdrawal or final determination of the appeal shall be enforceable as if sub-paragraph (a) had not had effect.

(8) Any sums received by the Minister by virtue of this Article shall be paid into the annual income of the States.

(9) In this Article "court" means either the Royal Court or the Petty Debts Court.

30 Appeals against penalty notices

(1) A person on whom a penalty notice is served may appeal against the notice before the end of the period of 4 weeks following the date of service of the notice.

(2) An appeal under paragraph (1) shall lie to the Tribunal.

(3) On an appeal under paragraph (1), the Tribunal shall dismiss the appeal unless it is shown –

(a) that, in the case of each of the allegations of failure to comply with the enforcement notice, the facts are such that an officer who was aware of them would have had no reason to serve any penalty notice on the appellant;

(b) that the penalty notice is incorrect in some of the particulars which affect the amount of the financial penalty; or

(c) that the calculation of the amount of the financial penalty is incorrect,

and for the purposes of any appeal relating to a penalty notice, the enforcement notice in question shall (subject to rescission or rectification on any appeal brought under Article 27) be taken to be correct.

(4) Where an appeal is allowed by virtue of paragraph (3)(a), the Tribunal shall rescind the penalty notice.

(5) If, in a case where paragraph (4) does not apply, an appeal is allowed by virtue of paragraph (3)(b) or (c) –

(a) the Tribunal shall rectify the penalty notice; and

(b) the penalty notice shall have effect as if it had originally been served as so rectified.

(6) Where a person has appealed under paragraph (1) against a penalty notice and the appeal has not been withdrawn or finally determined, the penalty notice –

(a) shall not be enforceable until the appeal has been withdrawn or finally determined; but

(b) subject to paragraph (4) and Article 29(7)(a) and (b), as from the withdrawal or final determination of the appeal shall be enforceable as if sub-paragraph (a) had not had effect.

Rights not to suffer detriment

31 The right not to suffer detriment

(1) An employee shall have the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer, done on the ground that –

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies;

(b) the employer was prosecuted for an offence under Article 35 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or

(c) the employee qualifies, or will or might qualify, for the minimum wage or for a particular rate of minimum wage.

(2) It shall be immaterial for the purposes of paragraph (1)(a) or (b) –

(a) whether or not the employee has the right; or

(b) whether or not the right has been infringed,

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed shall be made in good faith.

(3) This Article shall apply to –

(a) any right conferred by, or by virtue of, any provision of this Law for which the remedy for its infringement is by way of a complaint to the Tribunal;

(b) any right conferred by Article 26;

(c) any right conferred under Part 3A, 3B, 5A or 5B, and in particular any right connected with –

(i) the pregnancy of the employee,

(ii) the birth or adoption of a child,

(iii) a change in the hours, times or place of work, or an application to make such a change, under Part 3A or 3B,

(iv) the taking of time off, or the seeking of time off, under Part 5A,

(v) the employee not carrying out work for her employer during his or her parental leave period, or making contact with his or her employer during such period,

(vi) the employee seeking to take or avail himself or herself of any of the benefits of parental leave or the terms of his or her employment preserved under Part 5A, or

(vii) service as a reservist, as defined by Part 5B.[39]

(4) This Article shall not apply where the detriment in question amounts to dismissal.[40]

32 Enforcement of the right

(1) An employee may lodge a complaint to the Tribunal that the employee has been subjected to a detriment in contravention of Article 31.

(2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) The Tribunal shall not consider a complaint under this Article unless it is lodged –

(a) before the end of the period of 8 weeks beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be lodged before the end of that period of 8 weeks.

(4) For the purposes of paragraph (3) –

(a) where an act extends over a period, the "date of the act" means the last day of that period; and

(b) a deliberate failure to act shall be treated as done when it was decided on,

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when the employer does an act inconsistent with doing the failed act or, if the employer has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the failed act if it was to be done.

33 Remedies

(1) Where the Tribunal finds well-founded a complaint under Article 32 of a detriment, the Tribunal –

(a) shall make a declaration to that effect; and

(b) may make an award of compensation to be paid by the employer to the complainant of an amount not exceeding 4 weeks' pay, or such amount as may be prescribed, in respect of the act or failure to act to which the complaint relates.[41]

(2) The amount of the compensation awarded shall, subject to paragraph (6), be such as the Tribunal considers just and equitable in all the circumstances having regard to –

(a) the infringement to which the complaint relates; and

(b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss referred to in paragraph (2)(b) shall be taken to include –

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and

(b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss referred to in paragraph (2)(b) the Tribunal shall apply the same rule concerning the duty of a person to mitigate his or her loss as applies to damages recoverable under the customary law.

(5) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) An award of compensation under this Article shall not exceed such figure as may be prescribed.

34 Burden of proof

(1) Where, in civil proceedings, any question arises as to whether an individual qualifies or qualified at any time for the minimum wage, it shall be presumed that the individual qualifies or, as the case may be, qualified at that time for the minimum wage unless the contrary is established.

(2) Where, in civil proceedings, a person seeks to recover on a claim in contract the amount described as additional remuneration in Article 26(1), it shall be presumed for the purposes of the proceedings, so far as relating to that amount, that the employee in question was remunerated at a rate less than the minimum wage unless the contrary is established.

Offences

35 Offences

(1) If the employer of an employee who qualifies for the minimum wage refuses or wilfully neglects to remunerate the employee for any pay reference period at a rate which is at least equal to the minimum wage, that employer shall be guilty of an offence.

(2) If a person who is required to keep or preserve any record in accordance with Orders under Article 22 fails to do so, that person shall be guilty of an offence.

(3) If a person makes, or knowingly causes or allows to be made, in a record required to be kept in accordance with Orders under Article 22 any entry which that person knows to be false in a material particular, that person shall be guilty of an offence.

(4) If a person, for purposes connected with the provisions of this Part, produces or furnishes, or knowingly causes or allows to be produced or furnished, any record or information which that person knows to be false in a material particular, that person shall be guilty of an offence.

(5) Where the commission by any person of an offence under paragraph (1) or (2) is due to the act or default of some other person, that other person shall also be guilty of the offence.

(6) A person who aids, abets, counsels or procures the commission of an offence under this Part shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

(7) A person may be charged with and convicted of an offence by virtue of paragraph (5) whether or not proceedings are taken against any other person.

(8) In any proceedings for an offence under paragraph (2) it shall be a defence for the person charged to prove that he or she exercised all due diligence and took all reasonable precautions to secure that he or she, and any person under his or her control, complied with the provisions of this Part, and of any relevant Regulations and Orders made under it.

(9) A person guilty of an offence under paragraph (1) or (2) shall be liable to a fine of level 3 on the standard scale.[42]

(10) A person guilty of an offence under paragraph (3) or (4) shall be liable to imprisonment for a term of 12 months and to a fine.

Special classes of person

36 [43]

37 Mariners

For the purposes of this Part, an individual employed to work on board a merchant ship registered in Jersey shall be treated as an individual who under his or her contract ordinarily works in Jersey unless –

(a) the employment is wholly outside Jersey; or

(b) the person is not ordinarily resident in Jersey,

and related expressions shall be construed accordingly.

Extensions

38 Power to apply Part 4 to individuals who are not otherwise "employees"

The States may by Regulations make provision for this Part to apply, with or without modifications, as if –

(a) any individual of a specified description who would not otherwise be an employee for the purposes of this Part were an employee for those purposes;

(b) there were in the case of any such individual a contract of employment of a specified description under which the individual works; and

(c) a person of a specified description were the employer under that contract.

Exclusions

39 Share fishermen

A person –

(a) employed as master, or as a member of the crew, of a fishing vessel; and

(b) remunerated, in respect of that employment, only by a share in the profits or gross earnings of the vessel,

shall not qualify for the minimum wage in respect of that employment.

40 Employees of charities, etc.

(1) An employee employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body shall only qualify for the minimum wage in respect of that employment if the employee receives, or under the terms of his or her employment (apart from this Part) is entitled to –

(a) any monetary payments other than amounts payable in respect of expenses –

(i) actually incurred in the performance of his or her duties, or

(ii) reasonably estimated as likely to be or to have been so incurred; or

(b) any benefits in kind other than the provision of some or all of his or her subsistence or of such accommodation as is reasonable in the circumstances of the employment.

(2) A person who would satisfy the conditions in paragraph (1) but for receiving monetary payments made solely for the purpose of providing the person with means of subsistence shall be taken to satisfy those conditions if –

(a) the person is employed to do the work in question as a result of arrangements made between a charity acting in pursuance of its charitable purposes and the body for which the work is done; and

(b) the work is done for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.

(3) For the purposes of paragraph (1)(b) –

(a) any training (other than that which a person necessarily acquires in the course of doing his or her work) shall be taken to be a benefit in kind; but

(b) there shall be left out of account any training provided for the sole or main purpose of improving the employee's ability to perform the work which he or she has agreed to do.

(4) In this Article –

"associated fund-raising body" means a body of persons the profits of which are applied wholly for the purposes of a charity or voluntary organisation;

"charity" means a body of persons, or the trustees of a trust, established for charitable purposes only;

"receive", in relation to a monetary payment or a benefit in kind, means receive in respect of, or otherwise in connection with, the employment in question (whether or not under the terms of the employment);

"statutory body" means a body established by or under an enactment;

"subsistence" means such subsistence as is reasonable in the circumstances of the employment in question, and does not include accommodation; and

"voluntary organisation" means a body of persons, or the trustees of a trust, which is established only for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, but which is not a charity.

41 Prisoners

(1) A prisoner shall not qualify for the minimum wage in respect of any work which the prisoner does in pursuance of prison rules except work which is undertaken outside the prison as part of a programme of rehabilitation.

(2) In this Article –

"prisoner" means a person detained in, or on temporary release from, a prison;

"prison" includes any other institution to which prison rules apply; and

"prison rules" means rules made under Article 29 of the Prison (Jersey) Law 1957.

42 Religious and other communities: resident employees

(1) A residential member of a community to which this Article applies shall not qualify for the minimum wage in respect of employment by the community.

(2) Subject to paragraph (3), this Article shall apply to a community if –

(a) it is a charity or is established by a charity;

(b) a purpose of the community is to practise or advance a belief of a religious or similar nature; and

(c) all or some of its members live together for that purpose.

(3) This Article shall not apply to a community which –

(a) is a non-provided school; or

(b) provides a course of higher or vocational education.

(4) In this Article –

(a) "charity" has the same meaning as in Article 40; and

(b) "non-provided school", "higher education" and "vocational education" have the same meaning as in Article 1 of the Education (Jersey) Law 1999.

Miscellaneous

43 Application of Part 4 to superior employers

Where –

(a) the immediate employer of an employee is personally in the employment of some other person; and

(b) the employee is employed on the premises of that other person,

that other person shall be deemed for the purposes of this Part to be the employer of the employee jointly with the immediate employer.

PART 5

PAYMENT OF WAGES

44 Wages to be paid in legal tender

Subject to Article 45 wages shall be paid to an employee –

(a) in legal tender;

(b) by payment into an account at a bank, being –

(i) an account standing in the name of the person to whom the wages are due, or

(ii) an account standing in the name of that person jointly with one or more other persons, or

(iii) at the express and unsolicited request of the employee, and with written authority, signed by the employee, an account in the name of a third party who shall not be directly or indirectly associated or connected with the employer;

(c) by payment by postal order;

(d) by payment by money order; or

(e) by payment by cheque,

and, subject to the preceding provisions of this Article, shall not be paid in the form of promissory notes, vouchers or coupons or in any other form alleged to represent legal tender.

45 Partial payment of wages in kind

(1) Subject to the provisions of this Article, nothing in this Part shall prohibit the authorization under a relevant agreement or under any enactment, of the partial payment of wages in the form of allowances in kind in any

industry or occupation in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned.

(2) The partial payment of wages in the form of allowances in kind shall not be lawful unless –

(a) such allowances are appropriate for the personal use and benefit of the employee and the employee's family; and

(b) the value attributed to such allowances is fair and reasonable.

46 Wages to be paid directly to employees

Except under a relevant agreement, or another enactment, an employer shall pay the wages of an employee in his or her employment directly to the employee.

47 Freedom to dispose of wages

An employer shall not limit in any manner the freedom of an employee in his or her employment to dispose of his or her wages.

48 Deductions from wages

Nothing in this Law shall prohibit the deduction from an employee's wages of amounts authorized by or under another enactment or a relevant agreement.

49 Distraint on wages

Except as may be authorized by or under another enactment, no distraint may be made on wages by virtue of a provisional order issued by the Bailiff or the Judge of the Petty Debts Court, and a distraint on wages may only be made by virtue of a judgment or order of the Royal Court or the Petty Debts Court to the extent to which authority so to do is given by the judgement or order.

50 Wages to be paid at regular intervals

Except where another enactment or a relevant agreement provides otherwise, an employer shall pay the wages of an employee in his or her employment on normal working days and at regular intervals of not more than one month.

Pay statements

51 Itemised pay statement

(1) An employee must be given by his or her employer, at or before the time at which any payment of wages is made to the employee, a written itemised pay statement.[44]

(2) The statement shall contain particulars of –

(a) the gross amount of the wages;

(b) the amounts of any variable deductions from that gross amount and the purposes for which they are made;

(c) the net amount of wages payable; and

(d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

52 Power to amend provisions about pay statements

The States may by Regulations vary the provisions of Article 51 as to the particulars which are to be included in a pay statement by adding items to, or removing items from, the particulars listed in that Article or by amending any such particulars.

53 References to the Tribunal

(1) Where an employer does not give an employee a statement as required by Article 51 or where the statement the employer gives does not comply with what is required, the employee may refer the matter to the Tribunal to determine –

(a) what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned; and

(b) whether any compensation should be paid by the employer to the employee (and if so, subject to Article 54(1A), the amount of such compensation) by reason of the employer's failure to comply with such requirements.[45]

(2) Where –

(a) a statement purporting to be a pay statement purporting to comply with Article 51, has been given to an employee; and

(b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Law,

either the employer or the employee may require the question to be referred to and determined by the Tribunal.

(3) For the purposes of this Article a question as to the particulars which ought to have been included in a pay statement shall not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) The Tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless the reference was made –

(a) before the end of the period of 8 weeks beginning with the date on which the employment ceased; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 8 weeks.

54 Determination of references

(1) Where on a reference under Article 53 the Tribunal finds –

(a) that an employer has failed to give an employee a pay statement in accordance with Article 51; or

(b) that a pay statement does not, in relation to a deduction, contain the particulars required to be included in that statement by Article 51,

the Tribunal shall make a declaration to that effect, and may order that a pay statement shall be issued in a particular form, or may confirm the particulars as included or referred to in the statement given by the employer, amend those particulars, or substitute other particulars for them.

(1A) Where the Tribunal makes a declaration that it finds in accordance with paragraph (1)(a) or (b), the Tribunal may further order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.[46]

(2) Where on a reference in the case of which paragraph (1) applies the Tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of 13 weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the Tribunal may order the employer to pay to the employee a sum not exceeding the aggregate of the unnotified deductions so made.

(3) For the purposes of paragraph (2) a deduction is an unnotified deduction if it is made without the employer giving the employee, in any pay statement, the particulars of the deduction required by Article 51.

(4) The payment of a fine by the employer upon conviction for an offence under Article 55 shall be additional to, and shall not be taken as discharging, any liability of the employer to pay compensation under this Article.[47]

55 Offences

If an employer contravenes any of the provisions of this Part the employer shall be guilty of an offence and shall be liable, in respect of each offence, to a fine of level 3 on the standard scale.[48]

PART 5A[49]

PARENTAL RIGHTS

55A Interpretation for the purposes of Part 5A

(1) For the purposes of this Part –

"adopter", in relation to a child, means a person who has been matched with the child for adoption, and in a case where 2 people have been matched jointly, includes each of those people;

"adoption date" means the date on which a child is placed with an adopter or, in the case of overseas adoption, the date on which a child who is to be adopted by a person in Jersey enters Jersey;

"approved adoption society" has the meaning given in Article 1 of the Adoption (Jersey) Law 1961;

"child" means a person under the age of 18;

"childbirth" includes, except where the context otherwise requires –

(a) the birth of a living child at the full term of pregnancy; and

(b) the birth of a child, whether living or dead, at any time after 24 weeks of pregnancy,

and for the purposes of this Part it is irrelevant whether the child is or is to be placed with a surrogate parent or not;

"entitlement period" has the meaning given by Article 55D(6);

"expected week of adoption" means the week, beginning with midnight between Saturday and Sunday, during which it is expected that the adoption date will occur;

"expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

"official notification" means written notification, issued by the Minister for Children and Education, that he or she is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and has sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been approved as being a suitable adoptive parent;

"overseas adoption" means the adoption of a child who enters Jersey in connection with or for the purpose of adoption which does not involve the placement of the child for adoption under Jersey law;

"paid parental leave period" has the meaning given by Article 55E;

"parental leave" means the leave to which a person is entitled under Article 55D;

"parental responsibility" has the meaning given by Article 1 of the Children (Jersey) Law 2002;

"partner", in relation to a child's mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not the mother's or adopter's parent, grandparent, sister, brother, aunt or uncle;

"registered medical practitioner" has the same meaning as given in the Medical Practitioners (Registration) (Jersey) Law 1960;

"registered midwife" means a person registered as a midwife under the Health Care (Registration) (Jersey) Law 1995;

"registered nurse" means a person registered under the Health Care (Registration) (Jersey) Law 1995 as a nurse;

"surrogate parent" means a person on whose application, under section 54 or 54A of the Human Fertilisation and Embryology Act 2008 of the United Kingdom, an order of court has been made providing for a child to be treated in law as a child of that person, or a person who is a potential applicant for such an order (and for the purposes of this definition a person is a potential applicant if, at the time an application is made by the person under either section 54 or section 54A of that Act, the requirements in subsections (1)(a) and (b) of the relevant section are met, and the requirements in subsection (1)(c) of the relevant section can reasonably be expected to be met, in relation to that person). [50]

(2) For the purposes of this Part, the provisions of Article 57 shall not apply in computing a period of employment and instead a period of employment shall be computed in accordance with Article 60B(2) as if computing the period of employment for the purpose of determining whether a person has a right to a redundancy payment.

(3) The States may by Regulations –

(a) amend paragraph (1);

(b) amend any period referred to in this Part; or

(c) amend this Part to provide for a right described in this Part to apply with or without modification to other persons or classes of persons.

55B Right to time off for ante-natal or pre-adoption appointments[51]

(1) An employee in relation to whom this Article applies as provided by paragraph (1A)(a), (1B)(a) or (1C)(a) is entitled to be permitted by his or her employer to take time off during the employee's normal working hours, for the purpose stated in whichever of paragraphs (1A)(b), (1B)(b) or (1C)(b) is applicable in the employee's case.[52]

(1A) This Article applies, subject to paragraph (2) –

(a) in relation to an employee who –

(i) is pregnant, and

(ii) has made an ante-natal appointment;

(b) for the purpose of enabling the employee to keep that appointment.[53]

(1B) This Article applies, subject to paragraph (2) –

(a) in relation to an employee who has a qualifying relationship with a pregnant woman or her expected child;

(b) for the purpose of enabling the employee to accompany the woman when she attends an ante-natal appointment in Jersey.[54]

(1C) This Article applies, subject to paragraphs (2) and (2A) –

(a) in relation to an employee who has been notified by an approved adoption society that –

(i) a child is to be, or is expected to be, placed for adoption with the employee, and

(ii) the society has arranged an appointment in Jersey to enable the employee to have contact with the child or for another purpose connected with the adoption;

(b) for the purpose of enabling the employee to keep that appointment.[55]

(2) An employee is not entitled to take time off under paragraph (1) unless, if the employer so requests, the employee produces for the employer's inspection –

(a) in the case of an employee to whom this Article applies by virtue of paragraph (1A)(a) –

(i) a certificate from a registered medical practitioner, registered midwife or registered nurse stating that the employee is pregnant, and

(ii) an appointment card or other document showing that the ante-natal appointment has been made;

(b) in the case of an employee to whom this Article applies by virtue of paragraph (1B)(a) –

(i) a declaration, signed by the employee, to the effect that the purpose of his or her absence from work will be that specified in paragraph (1B)(b) and that he or she has a qualifying relationship as required by paragraph (1B)(a), and

(ii) such evidence that the ante-natal appointment has been made as the employer may reasonably require;

(c) in the case of an employee to whom this Article applies by virtue of paragraph (1C)(a), a document showing –

(i) the date and time of the appointment, and

(ii) that the appointment has been arranged by or at the request of the same adoption society which gave the notification described in paragraph (1C)(a).[56]

(2A) An employee to whom this Article applies by virtue of paragraph (1C) is not entitled to take time off on or after the date of the child's placement for adoption with the employee.[57]

(3) Paragraph (2)(a) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).[58]

(4) For the purposes of this Article –

(a) the normal working hours of an employee shall be taken to be any time when, in accordance with the employee's contract of employment, the employee is normally required to work;

(b) an "ante-natal appointment" means an appointment made by a pregnant woman, on the advice of a registered medical practitioner, registered midwife or registered nurse, to attend at any place for the purpose of receiving ante-natal care (which does not include ante-natal classes to prepare the woman for motherhood); and

(c) a person has a "qualifying relationship" with a pregnant woman or her expected child if the person is –

(i) married to, or the civil partner or partner of, the pregnant woman,

(ii) the father of the expected child,

(iii) a potential applicant for a parental order, under section 54 or 54A of the Human Fertilisation and Embryology Act 2008 of the United Kingdom, in respect of the expected child.[59]

(5) In a case where this Article applies by virtue of paragraph (1C)(a) and more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this Article has effect as if –

(a) the purpose specified in paragraph (1C)(b) were the purpose of having contact with any one or more of the children and any other purpose connected with any adoption which is part of the same arrangement; and

(b) the reference in paragraph (2A) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be so placed as part of the arrangement.[60]

(6) In a case where 2 people have been matched jointly with a child for adoption, this Article may apply by virtue of paragraph (1C)(a) to each of those people.[61]

55C Right to remuneration during time off to receive ante-natal care

(1) An employee who is entitled to take time off under Article 55B for the purpose stated in paragraph (1A)(a) of that Article is entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate, whether or not her employer has permitted her to take the time off. [62]

(1A) An employee who is entitled to take time off under Article 55B for the purpose stated in paragraph (1B)(a) or (1C)(a) of that Article is entitled to be paid remuneration by his or her employer –

(a) at the appropriate hourly rate; and

(b) for a total period (which need not be continuous) not exceeding 10 hours,

whether or not the employer has permitted the employee to take the time off.[63]

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay, calculated in accordance with Schedule 1, as applied by paragraph 9 of that Schedule, and divided by the number of working hours in a week for that employee when employed under the contract of employment in force when the employee takes the time off.[64]

(3) [65]

(4) The right to any amount under this Article does not affect any right of an employee in relation to remuneration under that person's contract of employment. [66]

(5) Any remuneration paid to an employee under his or her contract of employment in respect of a period of time off under Article 55B goes towards discharging any liability of the employer to pay remuneration under this Article in respect of that period; and, conversely, any payment of remuneration under this Article in respect of a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.[67]

55D Entitlement to parental leave[68]

(1) An employee to whom paragraph (2) applies is entitled to parental leave amounting to a maximum of 52 weeks in total.

(2) This paragraph applies to any employee who –

(a) is the mother of a child and, subject to paragraph (4), fulfils the requirements in Article 55F;

(b) is a person who –

(i) has a qualifying relationship with a child or with the mother or adopter of a child,

(ii) fulfils the requirements in Article 55F, and

(iii) has, or expects to have, responsibility for the upbringing of the child, or the main responsibility (apart from any responsibility of the mother) for the upbringing of the child; or

(c) is the adopter of a child, and fulfils the requirements in Article 55G.[69]

(3) The total amount of parental leave –

(a) includes; and

(b) except in the case for which Article 55E(2) provides, must begin with,

a period of 6 weeks of paid parental leave under Article 55E.

(4) In the case for which Article 55E(2) provides, and for the purposes only of the entitlement to 6 weeks of paid parental leave under that provision, no regard is to be had as to whether or not the employee has fulfilled the requirements of Article 55F.

(5) Any period of unpaid parental leave –

(a) is additional to the entitlement to paid parental leave under paragraph (3); and

(b) must be taken in accordance with this Part at any time during, but not after the end of, the entitlement period.

(6) The "entitlement period" means the period which –

(a) begins no earlier than the beginning of the 11th week before the week in which childbirth, or placement for adoption, is expected to occur; and

(b) ends on –

(i) the date which is 2 years from the date of childbirth or placement for adoption, or

(ii) the date on which the employment terminates,

whichever is the sooner.

(7) For the purposes of this Article, a person has a "qualifying relationship" with a child, its mother or adopter if the person is –

(a) at the date of childbirth or placement for adoption, married to, or the civil partner or partner of –

(i) the child's mother, or

(ii) where one person only is matched with the child, the child's adopter;

(b) the father of the child; or

(c) a surrogate parent of the child.[70]

(8) For the purposes of this Article, an employee is treated –

(a) as having responsibility or the main responsibility for the upbringing of a child, if the employee would have had such a responsibility but for the fact that the child was stillborn after 24 weeks of pregnancy, or has died;

(b) as married to, or the civil partner or partner of, a child's mother or adopter, even if the child's mother or adopter has died.

(9) An employee's entitlement to parental leave under this Article is not affected –

(a) by the birth of more than one child as a result of the same pregnancy; or

(b) in the case of –

(i) an adoption, by the placement for adoption of more than one child, or

(ii) an overseas adoption, by more than one child being adopted, as part of the same arrangement.

55E Paid parental leave[71]

(1) An employer must not require an employee to work during any period which the employee is entitled to take, and does take, as paid parental leave (a "paid parental leave period").

(2) In the case of an employee who is pregnant or has given birth, the paid parental leave period must begin with the day on which childbirth occurs.

(3) An employee who would normally have been required, under his or her contract of employment, to work during a paid parental leave period –

(a) is entitled to be paid remuneration by his or her employer not exceeding, in total, 6 weeks' pay at the appropriate weekly rate;

(b) is entitled, during that period, to the benefit of all terms and conditions of employment which would have applied had he or she been at work during that period; and

(c) is bound, during that period, by any obligations arising under those terms and conditions, except as provided by paragraph (1) and (2).

(4) For the purposes of paragraph (3)(a) the appropriate weekly rate is the amount of one week's pay, calculated in accordance with Schedule 1.

(5) Any remuneration paid to an employee under a contract of employment in respect of a paid parental leave period goes towards discharging any liability of the employer, under paragraph (3), to pay remuneration in respect of that period, and conversely, any payment of remuneration under paragraph (3) in respect of such a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.

(6) Any remuneration to be paid by an employer to an employee under paragraph (3) is to be reduced by any amount received by the employee by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974, or by way of parental allowance under Article 22 of that Law, in respect of the paid parental leave period.[72]

55F Notification of intention to take parental leave in relation to childbirth[73]

(1) The requirements mentioned in Article 55D(2)(a) and (b)(ii) are that –

(a) no later than the end of the 15th week before the expected week of childbirth, or if it is not reasonably practicable to do so by that time, as soon afterwards as is reasonably practicable, the employee notifies the employer in writing of –

(i) the pregnancy,

(ii) the expected week of childbirth,

(iii) the date on which, subject to paragraphs (2) and (4), the employee intends each parental leave period to start, and

(iv) the duration of each period of leave which, in accordance with Article 55H, the employee intends to take; and

(b) if requested by the employer to do so, the employee provides a certificate from –

(i) a registered medical practitioner,

(ii) a registered midwife, or

(iii) a registered nurse,

stating the expected week of childbirth.

(2) An employee who has notified a date (the "original date") under paragraph (1)(a)(iii) may vary the original date if the employee notifies the employer in writing of a new date, by whichever is the earlier of –

(a) 42 days before the original date; or

(b) 42 days before the new date,

or, if neither is reasonably practicable, as soon as reasonably practicable.

(3) Notification under paragraph (1)(a)(iii) or (2) must not specify a date earlier than the beginning of the 11th week before the expected week of childbirth.

(4) Where notification of a new date is given under paragraph (2), the employer must take all reasonable steps to accommodate an employee's intended second and third parental leave periods, and in determining what steps are reasonable, the matters to be considered include –

(a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;

(b) the characteristics of the employer such as the nature and size of the employer's business;

(c) the implications in relation to other employees of the employer; and

(d) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.

55G Notification of intention to take parental leave in relation to adoption[74]

(1) The requirements mentioned in Article 55D(2)(c) are that the employee –

(a) has notified the approved adoption society of his or her consent to the placement of a child or, in the case of overseas adoption, has received official notification of that adoption;

(b) notifies the employer in writing of –

(i) the intended adoption,

(ii) the expected week of adoption,

(iii) the date on which, subject to paragraphs (2) and (5), the employee intends each parental leave period to start, and

(iv) the duration of each period of leave which, in accordance with Article 55H, the employee intends to take; and

(c) if requested by the employer to do so, provides evidence in writing of the expected week of adoption notified to the employer under paragraph (1)(b)(ii).

(2) An employee who has notified a date (the "original date") under paragraph (1)(b)(iii) may vary the original date if the employee notifies the employer in writing of a new date, by whichever is the earlier of –

(a) 42 days before the original date; or

(b) 42 days before the new date,

or, if neither is reasonably practicable, as soon as reasonably practicable.

(3) Notification under paragraph (1)(b) must be given to the employer –

(a) no later than 7 days after the date on which the employee receives official notification of having been matched with the child for the purposes of adoption or, in the case of overseas adoption, after the employee receives notice of the date on which the child is expected to enter Jersey; or

(b) in a case where it is not reasonably practicable to comply with sub-paragraph (a), as soon as is reasonably practicable.

(4) Notification under paragraph (1)(b)(iii) or (2) must not specify a date earlier than the beginning of the 11th week before the expected week of adoption.

(5) Where notification of a new date is given under paragraph (2), the employer must take all reasonable steps to accommodate an employee's intended second and third parental leave periods, and in determining what steps are reasonable, the matters to be considered include –

(a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;

(b) the characteristics of the employer such as the nature and size of the employer's business; and

(c) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.

55H Periods of parental leave[75]

(1) In the absence of any relevant agreement to more favourable effect between the employer and the employee, an employee may choose to take the parental leave (including, except in the case for which Article 55E(2) provides, paid parental leave) to which he or she is entitled under this Part –

(a) in no more than 3 separate periods during the entitlement period; and

(b) for no less than 2 weeks in the case of each such period.

(2) Subject to paragraph (3), the calculation of a period of parental leave begins on –

(a) the date notified under Article 55F(1)(a)(iii) or Article 55G(1)(b)(iii), as the case may be; or

(b) where the employee has notified a new date under Article 55F(2) or 55G(2), on that new date (or if a new date has been notified more than once, on the last such date).

(3) In a case where –

(a) an employee has chosen to begin a period of parental leave on the date on which the child is born or adopted; and

(b) he or she is at work on that date,

the period of parental leave begins on the day after that date.

(4) Where the employee's employment terminates –

(a) after the commencement of a period of parental leave; but

(b) before the time when (apart from this paragraph) that period would end,

the period of parental leave ends on the date of the termination.

55I Application of terms and conditions during unpaid parental leave[76]

(1) This Article applies in respect of any period of parental leave other than paid parental leave under Article 55E.

(2) An employer must not require an employee to work during any period which the employee is entitled to take, and does take, as parental leave.

(3) An employee who takes parental leave –

(a) is entitled, during the period of that leave, to the benefit of all terms and conditions of employment, except those as to remuneration, which would have applied had he or she been at work during that period; and

(b) is bound during that period by any obligations arising under those terms and conditions except as provided by paragraph (2).

(4) For the purposes of paragraph (3)(a), any wages or salary payable to, or bonus or commission for work done by, the employee which are attributable –

(a) to a period during which the employee is on parental leave, are to be treated as remuneration; and

(b) to a period (other than a parental leave period) before the beginning of any period of the employee's parental leave, are not to be treated as remuneration.

55J Work during period of parental leave[77]

(1) An employee may carry out work for his or her employer without bringing a period of parental leave, or the entitlement period, to an end.

(2) For the purposes of this Article, and subject to paragraph (3) –

(a) any work carried out on any day constitutes a day's work; and

(b) work means any work done under the employee's contract of employment and may include any training or other activity undertaken for the purposes of his or her employment.

(3) Reasonable contact from time to time between an employee and his or her employer, for such purposes as discussing the employee's return to work –

(a) does not constitute work; and

(b) does not bring a period of parental leave, or the entitlement period, to an end.

(4) This Article does not confer any right, on an employer, to require any work to be carried out during an employee's parental leave.

(5) Any day's work carried out under this Article does not have the effect of extending the total duration of a period of parental leave or of the entitlement period.

55K Notification of intention to return to work[78]

(1) An employee who intends to return to work earlier than the end of a particular period of parental leave must give his or her employer not less than 42 days' notice in writing of the intended date of such return.

(2) The employer must take all reasonable steps to accommodate an employee's intended early return to work, and in determining what steps are reasonable, the matters to be considered include –

(a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;

(b) the characteristics of the employer such as the nature and size of the employer's business; and

(c) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.

(3) If an employee attempts to return to work earlier than the end of that period without complying with paragraph (1), the employer may, subject to paragraph (4), postpone the employee's return to such a date as will secure that the employer has 42 days' notice of the employee's return to work and, if the employer does so, the employer must notify the employee in writing of that date.

(4) An employer may not, under paragraph (3), postpone an employee's return to work to a date occurring after the end of the particular period of parental leave in question.

(5) Where an employee is notified of a postponed date for return to work under paragraph (3), the employer is under no obligation to pay remuneration to the employee until that postponed date (even if the employee returns to work before that date).

55L Right to return to work after parental leave[79]

(1) An employee returning to work immediately after a period of parental leave is entitled to return to the job in which he or she was employed immediately before that period.

(2) The right conferred by paragraph (1) is a right to return –

(a) with such seniority, pension rights and all other rights in relation to the employee's job as he or she would have had if he or she had not been absent on such leave; and

(b) on terms and conditions no less favourable than those which would have applied if he or she had not been so absent.

55M Offence of making false statements etc.[80]

(1) If, for purposes connected with the provisions of this Part, a person –

(a) makes, or knowingly causes or allows to be made, a statement; or

(b) produces or furnishes, or knowingly causes or allows to be produced or furnished, a document, record or information,

which the person knows to be false in a material particular, the person is guilty of an offence.

(2) A person guilty of an offence under this Article is liable to imprisonment for a term of 12 months and to a fine.

55N [81]

55O [82]

55P [83]

55Q [84]

55QA[85]

55R Contractual rights to time off for ante-natal and pre-adoption appointments and for parental leave[86]

(1) This Article applies where an employee –

(a) is entitled to time off under this Part –

(i) for the purpose of attending an ante-natal or pre-adoption appointment, or

(ii) by way of parental leave; and

(b) has a right which corresponds to that entitlement and which arises under the employee's contract of employment or otherwise.[87]

(2) In a case where this Article applies –

(a) the employee may not exercise both the entitlement under this Part and the corresponding right under the employee's contract of employment but may, in taking the leave for which the right and

entitlement provide, take advantage of whichever provision is, in any particular respect, the more favourable; and

(b) the provisions relating to the entitlements under this Part apply, subject to any modifications necessary to give effect to any more favourable contractual terms or any more favourable rights to be exercised by the employee as a result of the advantage taken under sub-paragraph (a).

55S Complaints to Tribunal for breach of requirement under Part 5A

(1) An employee may present a complaint to the Tribunal that his or her employer has contravened any requirement under Part 5A.

(2) No complaint under this Article may be made in respect of a matter which has been settled by agreement or withdrawn.

(3) The Tribunal shall not consider a complaint under this Article unless it is presented –

(a) before the end of the period of 8 weeks beginning with the relevant date; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

(4) For the purposes of paragraph (3), the "relevant date" mentioned in sub-paragraph (3)(a) is –

(a) in the case of an alleged contravention of Article 55B(1), the date of the ante-natal appointment referred to in either Article 55B(1A) or 55B(1B), or of the appointment referred to in Article 55B(1C), whichever is the provision by virtue of which Article 55B(1) applies in the particular case;

(b) in the case of an alleged contravention of Article 55C(1) or (1A) or Article 55E(3)(a), the date which is 28 days after the date on which the employee concerned would expect normally to receive remuneration for the period of time off under Article 55C or parental leave under Article 55E;

(c) in the case of an alleged contravention of rights connected with parental leave conferred by any of Articles 55D, 55E, 55F(2), or 55H to 55L, the date of the day immediately following the day on which the particular period of parental leave in question ends;

(d) in any other case, the date of the contravention complained of.[88]

(5) The right to present a complaint under this Article is without prejudice to any other right conferred on an employee under this Law.

(6) The States may amend this Article by Regulations.

55T Remedies for breach of Part 5A

(1) Where the Tribunal finds a complaint under Article 55S well-founded it shall make a declaration to that effect and may –

(a) order the employer to pay the whole or any part of any amount to which the employee is entitled under Article 55C or 55E(3)(a); and

(b) order the employer to pay compensation to the employee in respect of each contravention, of an amount not exceeding 4 weeks' pay.

(2) The States may amend paragraph (1) by Regulations.

PART 5B[89]

RESERVISTS' RIGHTS

55U Interpretation

(1) For the purposes of this Part, "reservist" means a person who is –

(a) a member of one of the reserve forces; or

(b) a person liable to be recalled for service under Part VII of the Reserve Forces Act 1996 of the United Kingdom; and

"service" means permanent service of a reservist pursuant to –

(a) call out under Part IV, V or VI of that Act; or

(b) recall on the authority of a recall order under Part VII of that Act.

(2) In paragraph (1)(a), "reserve forces" means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Regular Reserve, the Army Reserve, the Royal Air Force Reserve or the Royal Auxiliary Air Force.

55V Requirement to notify intention of returning to work

(1) A reservist who intends to return to work following service shall give his or her former employer notice of that intention in accordance with paragraphs (2) and (3).

(2) Notice under paragraph (1) shall –

(a) be in writing;

(b) be given by the reservist or by another person acting with the reservist's authority;

(c) subject to paragraph (4), be given during the period –

(i) beginning with the end of the service, and

(ii) ending with the third Monday after the end of the service; and

(d) state the date, having regard to paragraph (3), on which the reservist will be available for work.

(3) The date stated in the notice shall be no later than 21 days after the latest date on which notice may be given under paragraph (2)(c).

(4) A notice given after the end of the period described in paragraph (2)(c) is not invalid if –

(a) the person giving it was prevented from doing so within that period by sickness or other reasonable cause; and

(b) it was given as soon as reasonably possible after the end of that period.

55W Right to return and continuity of terms and conditions etc.

(1) Subject to paragraphs (3) and (4), where notice is validly given under Article 55V the former employer shall take the reservist back into work at the first opportunity, on or after the date stated in that notice, at which it is reasonable and practicable for the former employer to do so.

(2) If, owing to sickness or other reasonable cause, the reservist is not available for work until after the expiry of the 21 days' period mentioned in Article 55V(3) –

(a) his or her right to return to work shall not be invalidated by reason only of the expiry of that period; and

(b) a further date, being as soon as reasonable after the expiry of that period, may be notified by the reservist as the date on which he or she will be available for work.

(3) For the purposes of paragraph (1), an opportunity to take the reservist back into work shall not be taken to have arisen if the former employer makes work available to the reservist but –

(a) the reservist has, or reasonably believes that he or she has, reasonable cause for not taking it; and

(b) the reservist, or another person acting with the reservist's authority, gives notice accordingly to the former employer –

(i) in writing, and

(ii) stating the facts on which the reservist relies as constituting the reasonable cause.

(4) Nothing in this Article obliges the former employer to take a reservist back into work after 6 months have elapsed from the end of the reservist's service.

(5) A reservist's right to return to work is a right to return to the job in which he or she was employed immediately before his or her service, or to an equivalent job.

(6) The right conferred by paragraph (1) is a right to return –

(a) with such seniority, pension rights and all other rights in relation to his or her job as the reservist would have had if he or she had not been absent on service; and

(b) on terms and conditions no less favourable than those which would have applied if he or she had not been so absent.

55X Complaints to Tribunal

(1) A person may present a complaint to the Tribunal on any or all of the following grounds, namely that –

(a) the former employer has failed to take the reservist back into employment either in accordance with Article 55W(1), or at all;

(b) the former employer has failed to have regard to Article 55W(2) or (5) (in such a respect as is specified in the complaint).

(2) No complaint may be made under this Article in respect of any matter which has been settled by agreement or withdrawn.

(3) The Tribunal shall not consider a complaint under this Article unless it is presented –

(a) before the end of the period of 8 weeks beginning with the relevant date; or

(b) within such further period as the Tribunal considers reasonable, in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of 8 weeks.

(4) For the purposes of paragraph (3) the 'relevant date' is the day immediately after the date stated in the notice given by the reservist under Article 55V.

(5) The right to present a complaint under this Article is without prejudice to any other right conferred on an employee under this Law.

(6) The States may amend this Article by Regulations.

55Y Remedies for infringement of right under this Part

(1) Where the Tribunal finds a complaint under Article 55X well-founded it shall make a declaration to that effect and may either –

(a) make a direction for reinstatement, and in doing so may specify –

(i) any rights and privileges (including seniority and pension rights) which must be restored to the complainant, and

(ii) the date by which the former employer must comply with the direction;

(b) make a direction for re-engagement, and in doing so may specify the terms on which the re-engagement is to take place, including –

(i) the identity of the former employer, or a successor or associate (as defined by Article 79(7)) of the employer,

(ii) the nature of the employment,

(iii) the remuneration for the employment,

(iv) any rights and privileges (including seniority and pension rights) which must be restored to the complainant upon reinstatement, and

(v) the date by which the former employer (including the employer's successor or associate) must comply with the direction; or

(c) make an award of compensation to be paid by the former employer to the complainant, of such an amount as the Tribunal thinks just and equitable, having regard to all the circumstances, up to 26 weeks' pay.

(2) Where the Tribunal makes a direction under paragraph (1) and the former employer does not fully comply with the terms of such direction, then unless the former employer can satisfy the Tribunal that such compliance was not practicable, the Tribunal shall make an award of further compensation to be paid by the former employer to the complainant, of such an amount as the Tribunal thinks fit, up to 26 weeks' pay.

(3) For the purposes of paragraphs (1) and (2) a week's pay shall be calculated in accordance with Schedule 1.

55Z Continuity following return to work etc. under this Part

(1) Where a reservist returns to work following –

(a) the exercise of the right conferred by Article 55W; or

(b) reinstatement or re-engagement pursuant to a direction given under Article 55Y,

his or her service shall not be taken to break the period of employment when computing its length for the purposes of this Law, but (subject to paragraph (2)) the length of the service shall not be counted in the computation.

(2) The length of any service by an employee who has returned to work as described in paragraph (1) shall be counted in the computation, if and to the extent that a relevant agreement provides that the service should be so counted.

PART 6

TERMINATION OF EMPLOYMENT

56 Minimum period of notice

(1) Subject to paragraph (9), the notice required to be given by an employer to terminate the employment of an employee who has been continuously employed for one week or more shall be not less than –

(a) one week's notice if his or her period of continuous employment is less than 2 years;

(b) 2 weeks' notice if his or her period of continuous employment is 2 years or more but less than 3 years;

(c) 3 weeks' notice if his or her period of continuous employment is 3 years or more but less than 4 years;

(d) 4 weeks' notice if his or her period of continuous employment is 4 years or more but less than 5 years;

(e) 5 weeks' notice if his or her period of continuous employment is 5 years or more but less than 6 years;

(f) 6 weeks' notice if his or her period of continuous employment is 6 years or more but less than 7 years;

(g) 7 weeks' notice if his or her period of continuous employment is 7 years or more but less than 8 years;

(h) 8 weeks' notice if his or her period of continuous employment is 8 years or more but less than 9 years;

(i) 9 weeks' notice if his or her period of continuous employment is 9 years or more but less than 10 years;

(j) 10 weeks' notice if his or her period of continuous employment is 10 years or more but less than 11 years;

(k) 11 weeks' notice if his or her period of continuous employment is 11 years or more but less than 12 years;

(l) 12 weeks' notice if his or her period of continuous employment is 12 years or more.[90]

(2) The notice required to be given by an employee who has been continuously employed for one week or more shall be not less than –

(a) 1 week's notice if his or her period of continuous employment is more than 1 week but less than 26 weeks;

(b) 2 weeks' notice if his or her period of continuous employment is 26 weeks or more but less than 5 years; or

(c) 4 weeks' notice if his or her period of continuous employment is 5 years or more.[91]

(3) Any provision for shorter notice in a relevant agreement with a person who has been continuously employed for 4 weeks or more shall have effect subject to paragraphs (1) and (2), but this Article shall not prevent either party from waiving his or her right to notice on any occasion or from accepting a payment in lieu of notice.

(4) A contract of employment of a person who has been continuously employed for 13 weeks or more which is a contract for a term certain of 4 weeks or less shall have effect as if it were for an indefinite period; and, accordingly, paragraphs (1), (2) and (3) shall apply to the contract.

(5) Paragraphs (1), (2) and (3) shall not apply to a contract of employment made in contemplation of the performance of a specific task which is not expected to last for more than 13 weeks unless the employee has been continuously employed for a period of more than 13 weeks.

(6) This Article shall not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

(7) A relevant agreement may specify periods of notice longer than those specified in paragraphs (1) and (2).

(8) The period of continuous employment for the purposes of this Article shall be computed in accordance with Article 57.

(9) Subject to paragraphs (4) and (5), an employer shall be under no obligation to give notice under paragraph (1) to an employee who is employed under a fixed term contract of employment.

57 Computation of period of employment

(1) Except so far as otherwise provided by –

(a) the following provisions of this Article; or

(b) any of Articles 55Z, 60B or 77G,

any week which does not count under paragraphs (2) or (3) shall break the continuity of the period of employment for the purposes of this Law.[92]

(2) Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment shall count in computing a period of employment.[93]

(3) Any week in which the employee is, for the whole or part of the week –

(a) incapable of work because of sickness or injury;

(b) absent from work because of a temporary cessation of work; or

(c) absent from work in circumstances such that, by arrangement or custom, the employee is regarded as continuing in the employment of his or her employer for all or any purposes,

shall count as a period of employment despite its not falling within paragraph (2).

(4) If –

(a) a fixed term contract of employment has expired in accordance with its terms; and

(b) another fixed term contract of employment is entered into by the same parties which takes effect not more than 26 weeks after the expiry of the previous fixed term contract of employment,

the interval between the 2 periods of employment shall not be taken to break the period of employment when computing its length, but the length of the interval shall not be counted in the computation.

(5) A week shall not count under paragraphs (2) to (4) if in that week, or any part of that week, the employee takes part in a strike.

(6) The continuity of an employee's period of employment shall not be broken by a week which does not count under this Article if in that week, or in a part of that week, the employee takes part in a strike.

(7) The continuity of the period of employment shall not be broken by a week which does not count under this Article if, in that week, or in a part of that week, the employee is absent from work because of a lock-out by his or her employer.

58 Change of employer

(1) Subject to the provisions of this Article and of Article 59, the provisions of this Part shall relate only to employment by a single employer.

(2) If a trade or business or an undertaking is transferred from one person to another, the period of continuous employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period of employment.

(3) If, on the death of an employer, the employee is taken into the employment of the personal representatives of the deceased, the employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives and the death shall not break the continuity of the period of employment.

(4) If there is a change in the partners or personal representatives who employ any person, the employee's period of employment at the time of the change shall count as a period of employment with the partners or personal representatives after the change, and the change shall not break the continuity of the period of employment.

(5) If an employee of a company is taken into the employment of another company which, at the time when the employee is taken into its employment is an associated company of the first-mentioned company, the employee's period of employment at that time shall count as a period of employment with the associated company and the change of employer shall not break the continuity of the period of employment.

(6) For the purposes of paragraph (5), a company is associated with another company if it is a subsidiary or a holding company of that other company, or if both companies are subsidiaries of the same holding company.

(7) Nothing in this Article derogates from Regulation 14 of the Companies (Demerger) (Jersey) Regulations 2018 (which has effect to provide that, among other matters, a period of employment with a demerging company is to be treated as a period of employment with the demerged company, and the demerger is not to be treated as interrupting the continuity of that period).[94]

(8) In this Article, "company" includes a limited liability company.[95]

59 Rights of employee

(1) The rate of remuneration payable during the period of notice by an employer or recoverable by the employer where an employee terminates the employment without the requisite notice provided for by this Law shall be that which applied immediately before the notice to terminate the

employment was given by the employer or the employee left without giving the requisite notice.

(2) Where bonus payments or gratuities of any kind have been agreed at the time of commencement of an employment as forming part of an employee's remuneration, to be paid at intervals or periods of time, the employee shall be entitled to receive a pro rata payment of such bonus payments and gratuities at the termination of his or her employment unless –

(a) such employment has been legitimately terminated by the employer by reason of the conduct of the employee;

(b) or –

(i) the employee agreed at the time of commencing the employment that no bonus or gratuity nor any part of such bonus or gratuity would become payable to the employee until after a specified period of employment had been completed, and

(ii) the employee terminates the employment before completing the specified period.

60 Power to amend this Part

The States may by Regulations amend any of the periods of time, whether expressed in hours, weeks or years, mentioned in this Part.

PART 6A[96]

RIGHTS ON REDUNDANCY

60A The right to redundancy payment

(1) Subject to the following provisions of this Part, if an employer dismisses any employee by reason of redundancy, the employer shall pay the employee a redundancy payment.[97]

(2) Remuneration paid to the employee under his or her contract of employment in respect of redundancy shall go towards discharging the employer's liability under paragraph (1) to make a redundancy payment; and conversely any redundancy payment under that paragraph shall go towards discharging any liability of the employer to pay remuneration to the employee under his or her contract of employment in respect of redundancy.[98]

60B Qualifying period of employment[99]

(1) An employee does not have any right to a redundancy payment unless that person has been continuously employed for a period of not less than 2 years ending with the effective date of termination.

(2) The provisions of Article 57 shall not apply in computing the period of employment for the purposes of this Article and instead the period of employment shall be computed as follows –

(a) any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment shall count in computing a period of employment;

(b) except so far as otherwise provided by the following provisions of this paragraph any week which does not count under sub-paragraph (a) shall break the continuity of the period of employment for the purposes of this Article;

(c) if –

(i) a fixed term contract of employment has expired in accordance with its terms, and

(ii) another fixed term contract of employment is entered into by the same parties which takes effect not more than 9 weeks after the expiry of the previous fixed term contract of employment,

the interval between the 2 periods of employment shall not be taken to break the period of employment when computing its length, but the length of the interval shall not be counted in the computation;

(d) a week shall not count under sub-paragraph (a) if, in that week, or any part of that week, the employee takes part in a strike;

(e) the continuity of an employee's period of employment shall not be broken by a week which does not count under this paragraph if in that week, or part of that week, the employee takes part in a strike;

(f) the continuity of the period of employment shall not be broken by a week which does not count under this paragraph if, in that week, or in a part of that week, the employee is absent from work because of a lock-out by his or her employer.

60C Amount of redundancy payment

(1) The amount of a redundancy payment shall be calculated by allowing one week's pay for each year of employment during the period, ending with the effective date of termination, in which the employee has been continuously employed.

(2) For the avoidance of doubt, in this Article "year" means a period of 12 calendar months.

(3) For the purposes of paragraph (1), the amount of one week's pay shall be calculated in accordance with Schedule 1 but shall not exceed the most recent figure for the mean average weekly earnings published by Statistics Jersey (within the meaning assigned by Article 2 of the Statistics and Census (Jersey) Law 2018) at least one month before the effective date of termination (disregarding any more recent figure published less than a month before the effective date of termination).[100]

(4) The Minister may, by Order, amend paragraph (3) to specify the amount or a different formula for calculating one week's pay.[101]

60CA Further provisions relating to continuity of employment[102]

(1) For the purposes of Articles 60B and 60C, if –

(a) an employer has paid the employee a redundancy payment under this Part; and

(b) the employee's contract of employment is renewed (whether by the same or another employer) or he or she is engaged under a new contract of employment (whether by the same or another employer),

the period in which an employee has been continuously employed is deemed to be broken on the date that is the effective date of termination referred to in Article 60B(1) or 60C(1), as the case may be.

(2) For the purposes of this Article, a redundancy payment shall be treated as having been paid under this Part if –

(a) the whole of the payment has been paid to the employee by the employer;

(b) the Tribunal has found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part; or

(c) the employee was entitled to receive the redundancy pay component of insolvency benefit under Article 26C of the Social Security (Jersey) Law 1974 relating to his or her employment (whether or not the employee received any redundancy pay to which he or she was entitled).[103]

60D Time limits applicable to redundancy payments

(1) An employee does not have any right to a redundancy payment under this Part unless, before the end of the period of 6 months beginning with the effective date of termination any of the following has occurred –

(a) the redundancy payment has been agreed and paid;

(b) the employee has made a claim for the redundancy payment by notice in writing given to the employer;

(c) a question as to the employee's right to, or the amount of, the redundancy payment has been referred to the Tribunal;

(d) a complaint relating to his or her dismissal has been presented to the Tribunal by the employee under Article 76.

(2) An employee is not deprived of his or her right to a redundancy payment by paragraph (1) if, during the period of 6 months immediately following the period mentioned in that paragraph, the employee –

(a) makes a claim for the payment by notice in writing given to the employer;

(b) refers to the Tribunal a question as to his or her right to, or the amount of, the payment; or

(c) presents a complaint relating to his or her dismissal under Article 76,

and it appears to the Tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under paragraph (2) whether it is just and equitable that an employee should receive a redundancy payment the Tribunal shall have regard to –

(a) the reason shown by the employee for his or her failure to take any such step as is referred to in paragraph (2) within the period mentioned in paragraph (1); and

(b) all other relevant circumstances.

60E Renewal of contract or re-engagement

(1) Where –

(a) an employee's contract of employment is renewed or he or she is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of that person's employment under the previous contract; and

(b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than 4 weeks after, the end of that employment,

the employee is not entitled to a redundancy payment.

(2) Paragraph (1) does not apply if –

(a) the provisions of the contract as renewed, or of the new contract, as to –

(i) the capacity and place in which the employee would be employed, and

(ii) the other terms and conditions of that employment,

differ (wholly or in part) from the corresponding provisions of the previous contract; and

(b) during the period specified in paragraph (3) –

(i) the employee or employer terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, and

(ii) the reason, or principal reason, for the termination is that the employer or employee, as the case may be, considers that the employment is not suitable for that employee.[104]

(3) For the purposes of paragraph (2)(b), the period is the period –

(a) beginning at the end of the employee's employment at the end of the previous contract; and

(b) ending with –

(i) the period of 4 weeks beginning with the date on which the employee starts work under the renewed or new contract, or

(ii) such longer period as may be agreed in writing by the employer and employee or the employee's representative.

(4) Where an offer (whether in writing or not) is made to an employee before the end of that person's employment –

(a) to renew that person's contract of employment; or

(b) to re-engage that person under a new contract of employment,

with the renewal or re-engagement to take effect either immediately on, or after an interval of not more than 4 weeks after, the end of that employment, the employee is not entitled to a redundancy payment if the employee unreasonably refuses the offer and paragraph (5) is satisfied.[105]

(5) This paragraph is satisfied where –

(a) the provisions of the contract as renewed, or of the new contract, as to –

(i) the capacity and place in which the employee would be employed, and

(ii) the other terms and conditions of that employment,

would not differ from the corresponding provisions of the previous contract; or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.[106]

60F Collective consultation requirements

(1) Where an employer is proposing to dismiss as redundant at one establishment 12 or more employees, such dismissals taking place within a period of 30 days or less, the employer shall consult about the dismissals all the persons who are the appropriate representatives of the affected employees.[107]

(2) The consultation shall begin at least 30 days before the first of the dismissals takes effect.

(3) For the purposes of this Article, the appropriate representatives of the affected employees are –

(a) in respect of any employee of a description in respect of which a trade union is registered under the Employment Relations (Jersey) Law 2007 and recognized in accordance with a code of practice approved under Article 25 of that Law, representatives of the trade union;

(b) in respect of each employee of a description in respect of which there is no trade union as described in sub-paragraph (a), whichever of the following employee representatives the employer chooses –

(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this Article, who (having regard to the purposes for and the method by

which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf,

(ii) employee representatives elected by the affected employees, for the purposes of this Article, in an election satisfying the requirements of Article 60G.[108]

(4) The consultation shall include consultation about ways of –

(a) avoiding the dismissals;

(b) reducing the numbers of employees to be dismissed; and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

(5) In determining how many employees an employer is proposing to dismiss as redundant, account shall be taken of employees in respect of whose proposed dismissals consultation has already begun if the redundancy of those employees is regarded as arising out of the same proposal and it would be reasonable to regard those employees as part of the same group of employees for the purpose of applying the consultation requirements in this Article.

(6) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives –

(a) the reasons for the employer's proposals;

(b) the numbers and descriptions of employees whom it is proposed to make redundant;

(c) the total number of employees of any such description employed by the employer at the establishment in question;

(d) the proposed method of selecting the employees who may be dismissed;

(e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and

(f) the proposed method of calculating the amount of any redundancy payments to be made to employees who may be dismissed.

(7) That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union, sent by post to the union at the address of its head or main office.

(8) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(9) If, in any case, there are special circumstances which mean that it is not reasonably practicable for the employer to comply with a requirement of paragraph (2), (4) or (6), the employer shall take all such steps towards

compliance with that requirement as are reasonably practicable in those circumstances.

(10) For the purposes of paragraph (9), where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances meaning that it is not reasonably practicable for the employer to comply with such a requirement.

(11) Where –

(a) the employer has invited any of the affected employees to elect employee representatives; and

(b) the invitation was issued long enough before the time when the consultation is required by paragraph (2) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this Article in relation to those employees if he or she complies with those requirements as soon as is reasonably practicable after the election of those representatives.

(12) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, the employer shall give to each affected employee the information set out in paragraph (6).

(13) In this Part "affected employee" means any employee who may be affected by the proposed redundancy or who may be affected by measures taken in connection with such redundancy but excludes any employee to whom paragraph (14) applies.[109]

(14) This paragraph applies to an employee who is employed under a contract of employment for a fixed term of one year or less unless –

(a) the employee was previously employed under another contract of employment for a fixed term of one year or less;

(b) the parties to both contracts of employment are the same; and

(c) the interval between the expiry of the previous contract of employment and the commencement of the employee's current contract of employment was not more than 9 weeks.[110]

60G Election of employee representatives

(1) The requirements for the election of employee representatives under Article 60F(3)(b)(ii) are that –

(a) the employer shall make such arrangements as are reasonably practicable to ensure that the election is fair;

(b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;

(c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;

(d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under Article 60F to be completed;

(e) the candidates for election as employee representatives are affected employees on the date of the election;

(f) no affected employee is unreasonably excluded from standing for election;

(g) all affected employees on the date of the election are entitled to vote for employee representatives;

(h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;

(i) the election is conducted so as to secure that –

(i) so far as is reasonably practicable, those voting do so in secret, and

(ii) the votes given at the election are accurately counted.

(2) Where, after an election of employee representatives satisfying the requirements of paragraph (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i).

60H Protective awards – complaint to Tribunal

(1) Where an employer has failed to comply with a requirement of Article 60F or Article 60G, a complaint may be presented to the Tribunal on that ground by any of the appropriate representatives or, if for any reason there are no such appropriate representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant.[111]

(2) If on a complaint under paragraph (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of Article 60F, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

(3) On a complaint under paragraph (1) that there has been a failure relating to the election of employee representatives, it shall be for the employer to show that the requirements in Article 60G have been satisfied.

(4) If the Tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(5) A protective award is an award in respect of one or more descriptions of employee who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, requiring the employer to pay remuneration to each such employee for the protected period.

(6) The protected period –

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier; and

(b) is of such length as the Tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's failure to comply with any requirement of Article 60F or 60G,

but shall not exceed 9 weeks.[112]

(7) The Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal –

(a) before the date on which the last of the dismissals to which the complaint relates takes effect;

(b) during the period of 8 weeks beginning with that date; or

(c) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of 8 weeks described in sub-paragraph (b), within such further period as it considers reasonable.

(8) If, on a complaint under this Article, a question arises –

(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of Article 60F or 60G; or

(b) whether the employer took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,

it is for the employer to show that there were such circumstances and that such steps were taken.

60I Entitlement under protective award

(1) Where a Tribunal has made a protective award, every employee of a description to which the award relates is entitled to be paid remuneration by that person's employer for the protected period, subject to this Article.

(2) The rate of remuneration payable is a week's pay for each week of the protected period.

(3) Remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.

(4) An employee is not entitled to remuneration under a protective award in respect of a period during which he or she is employed by the employer unless he or she would be entitled to be paid by the employer in respect of that period –

(a) under the contract of employment; or

(b) under Article 59.

(5) For the purpose of this Article –

(a) a week's pay shall be calculated in accordance with Schedule 1; and

(b) the calculation date referred to in Schedule 1 shall be the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the effective date of termination.

(6) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in that person's case as if the protected period ended on that person's death.

60J Termination of employment during protected period

(1) Where an employee is employed by the employer during the protected period and –

(a) that employee is fairly dismissed by the employer, otherwise than for redundancy; or

(b) the employee unreasonably terminates the contract of employment,

then, subject to the following provisions, the employee is not entitled to remuneration under the protective award in respect of any period during which, but for that dismissal or termination, the employee would have been employed.

(2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of the employee's employment under the previous contract) to renew the employee's contract of employment, or to re-engage the employee under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either –

(a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which the employee would be employed, and as to the other terms and conditions of the employment, would not differ from the corresponding provisions of the previous contract; or

(b) the offer constitutes an offer of suitable employment in relation to the employee,

the following provisions have effect.

(3) If the employee unreasonably refuses the offer, the employee is not entitled to remuneration under the protective award in respect of a period during which, but for that refusal, he or she would have been employed.

(4) If the employee's contract of employment is renewed, or the employee is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in paragraph (2)(b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this Article).

(5) The trial period begins with the ending of the employment under the previous contract and ends with the expiration of the period of 4 weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with paragraph (6) for the purpose of retraining the employee for employment under that contract.

(6) Any such agreement –

(a) shall be made between the employer and the employee or a representative of the employee before the employee starts work under the contract as renewed or, as the case may be, the new contract;

(b) shall be in writing;

(c) shall specify the date of the end of the trial period; and

(d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(7) If during the trial period –

(a) the employee, for whatever reason, terminates the contract or gives notice to terminate it and the contract is thereafter in consequence terminated; or

(b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter in consequence terminated,

the employee remains entitled to remuneration under the protective award unless, in a case falling with sub-paragraph (a), the employee acted unreasonably in terminating or giving notice to terminate the contract.

60K Right to time off to look for work or arrange for training

(1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by that person's employer to take time off during the employee's working hours before the end of that person's notice period in order to –

(a) look for new employment; or

(b) make arrangements for training for future employment.

(2) An employee is not entitled to take time off under this Article unless, on whichever is the later of –

(a) the date on which the notice is due to expire; and

(b) the date on which the employment would expire were notice given as required by Article 56,

the employee will have been (or would have been) continuously employed for a period of 2 years or more.

(3) For the purposes of paragraph (1) –

(a) an employee is entitled to be permitted to take such time off work as is reasonable provided that that period of permitted absence is at least the period during which the employee would be entitled to 40% of his or her week's pay during the period of absence, calculated in accordance with Schedule 1; and

(b) the working hours of an employee shall be taken to be any time when, in accordance with that person's contract of employment, the employee is required to be at work.[113]

(4) Paragraph (1) does not apply to an employee who is employed under a contract of employment for a fixed term of one year or less unless –

(a) the employee was previously employed under another contract of employment for a fixed term of one year or less;

(b) the parties to both contracts of employment are the same; and

(c) the interval between the expiry of the previous contract of employment and the commencement of the employee's current contract of employment was not more than 9 weeks.[114]

60L Right to remuneration for time off under Article 60K

(1) An employee who is permitted to take time off under Article 60K is entitled to be paid remuneration by that person's employer for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay, calculated in accordance with Schedule 1, divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force when the notice of dismissal was given.[115]

(3) Where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay, calculated in accordance with Schedule 1, shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which notice was given.[116]

(4) If an employer unreasonably refuses to permit an employee to take time off from work as required by Article 60K, the employee is entitled to be paid an amount equal to the remuneration to which that employee would have been entitled under paragraph (1) if the employee had been permitted to take the time off.

(5) The amount of an employer's liability to pay remuneration under paragraph (1) shall not exceed 40% of a week's pay of that employee during the period of absence, calculated in accordance with Schedule 1.

(6) The right to any amount under paragraph (1) or (4) does not affect any right of an employee in relation to remuneration under that person's contract of employment.

(7) Any contractual remuneration paid to an employee in respect of a period of time off under this Article shall go towards discharging any liability of

the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of such a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

60M Complaints to the Tribunal

(1) An employee may present a complaint to the Tribunal that the employer of that person –

(a) has refused to permit that employee to take time off as required by Article 60K(1); or

(b) has failed to pay the whole or part of any amount to which the employee is entitled under Article 60L(1) or (4).

(2) The Tribunal shall not consider a complaint under this Article unless it is presented –

(a) before the end of the period of 8 weeks beginning with the date on which it is alleged that the time off should have been permitted, whether or not it was in fact permitted then; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

(3) Where the Tribunal finds a complaint under this Article well-founded, the Tribunal shall –

(a) make a declaration to that effect; and

(b) direct the employer to pay to the employee such amount as it thinks reasonable.

(4) The amount which may be directed by the Tribunal to be paid by an employer under paragraph (3) may exceed the amount for which the employer may be liable under Article 60L.

60N Notifying the Minister

(1) If an employer proposes to dismiss as redundant at one establishment 12 or more employees, such dismissals taking place within a period of 30 days or less, the employer shall notify the Minister in writing of that proposal –

(a) before giving notice to terminate an employee's contract of employment in respect of any of those dismissals; or

(b) at least 30 days before the first of those dismissals takes effect,

whichever is earlier.[117]

(2) A notice given under this Article shall –

(a) be given to the Minister by delivery or by sending it by post to that person, at such address as the Minister may direct;

(b) where there are representatives to be consulted under Article 60F, identify them and state the date when consultation with them under that Article began;

(c) set out the reasons for the dismissal;

(d) specify the numbers of employees that the employer is proposing to dismiss as redundant; and

(e) be in such form and contain such other particulars as the Minister may direct.

(3) After receiving a notice under this Article from an employer the Minister may by written notice require the employer to give to the Minister such further information as may be specified in the notice.

(4) Where there are representatives to be consulted under Article 60F the employer shall give to each of them a copy of any notice given under paragraph (1).

(5) For the purposes of paragraph (4), copies shall be delivered to the representatives or sent by post to one or more addresses notified by the representatives to the employer, or, in the case of representatives of a trade union, sent by post to the union at its registered address.

(6) If, in any case, there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (1) to (5), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances.

(7) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

(8) The Minister may use the information received under this Article to consult with such other persons as he or she thinks fit.

60O Employee representative's right not to be subjected to detriment

(1) An employee has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his or her employer done on any of the following grounds –

(a) the employee's participation in an election of employee representatives, including his or her participation as a candidate, for the purposes of this Part;

(b) the employee's performance or proposed performance of any functions or activities as an employee representative, or candidate to become such a representative, for the purposes of this Part.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part 7.

60P Complaints to Tribunal for breach of Article 60O

(1) An employee may present a complaint to the Tribunal that he or she has been subjected to a detriment in contravention of Article 60O.

(2) The Tribunal shall not consider such a complaint unless it is presented within –

(a) the 8 weeks immediately following the date of the act; or

(b) such further period as the Tribunal may, in the interests of justice, consider reasonable.

(3) For the purposes of paragraph (2) –

(a) where an act extends over a period, the 'date of the act' means the last day of that period; and

(b) a deliberate failure to act shall be treated as done when it was decided on as construed in accordance with paragraph (4).

(4) In the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he or she does an act inconsistent with doing the act or, if the employer has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the act if it was to be done.

(5) Where the Tribunal finds a complaint under this Article well-founded, it shall –

(a) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay, calculated in accordance with Schedule 1; and

(b) declare that any action taken against the employee by the employer, other than the dismissal of the employee, is void.

60Q Right to time off for employee representatives

(1) An employee who is –

(a) an employee representative for the purposes of this Part; or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

is entitled to be permitted by his or her employer to take reasonable time off during the employee's working hours in order to perform his or her functions as such employee representative or candidate or in order to undergo training to perform such functions.

(2) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his or her contract of employment, the employee is required to be at work.

60R Right to remuneration for time off under Article 60Q

(1) An employee who is permitted to take time off under Article 60Q is entitled to paid remuneration by his or her employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay calculated in accordance with Schedule 1 divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his or her contract of employment ("contractual remuneration").

(4) Any contractual remuneration paid to an employee in respect of a period of time off under Article 60Q goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period, and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

60S Complaint to Tribunal for breach of Article 60Q or Article 60R

(1) An employee may present a complaint to the Tribunal that his or her employer –

(a) has unreasonably refused to permit the employee to take time off as required under Article 60Q; or

(b) has failed to pay the whole or any part of the amount to which the employee is entitled under Article 60R.

(2) The Tribunal shall not consider a complaint unless it is presented –

(a) before the end of the period of 8 weeks beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

(3) Where the Tribunal finds a complaint under this Article well-founded it shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the Tribunal shall also order the employer to pay compensation to the employee of an amount equal to the remuneration to which the employee would have been entitled under Article 60R if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under Article 60R, the Tribunal shall also order the employer to pay to the employee the amount which the Tribunal finds due to the employee.

PART 7

UNFAIR DISMISSAL

CHAPTER 1

RIGHT NOT TO BE UNFAIRLY DISMISSED

61 The right

(1) An employee shall have the right not to be unfairly dismissed by his or her employer.

(2) Paragraph (1) shall have effect subject to the following provisions of this Part.

Dismissal - Loss of unfair dismissal protection

62 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his or her employer if (and, subject to paragraph (2), only if) –

(a) the contract under which the employee is employed is terminated by the employer (whether with or without notice);

(b) the employee has been employed under a fixed term contract of employment, or a series of fixed term contracts, and the term of the subsisting fixed term contract expires without being renewed under the same contract; or

(c) the employee terminates the contract under which he or she is employed (with or without notice) in circumstances in which the employee is entitled to terminate it without notice by reason of the employer's conduct.[118]

(2) An employee shall be taken to be dismissed by his or her employer for the purposes of this Part if –

(a) the employer gives notice to the employee to terminate his or her contract of employment; and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire,

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

63 Effective date of termination

(1) Subject to the following provisions of this Article, in this Part and in Part 6A the "effective date of termination" –

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his or her employer or by the employee, means the date on which the notice expires;

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and

(c) in relation to an employee who is employed under a fixed term contract of employment which expires without being renewed under the same contract, means the date on which the term expires.[119]

(2) Where –

(a) the contract of employment is terminated by the employer; and

(b) the notice required by Article 56 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination,

for the purposes of Article 73 the later date shall be the effective date of termination.

(3) In paragraph (2)(b) "the material date" means –

(a) the date when notice of termination was given by the employer; or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

(4) Where –

(a) the contract of employment is terminated by the employee;

(b) the material date does not fall during a period of notice given by the employer to terminate that contract; and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 56 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Article 73 the later date shall be the effective date of termination.

(5) In paragraph (4) "the material date" means –

(a) the date when notice of termination was given by the employee; or

(b) where no notice was given, the date when the contract of employment was terminated by the employee.

Fairness

64 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it shall be for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal; and

(b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason shall fall within this paragraph if it –

(a) relates to the capability or qualifications of the employee for performing work of the kind which the employee was employed by the employer to do;

(b) relates to the conduct of the employee;

(ba) is that the employee was required to retire;

(c) is that the employee was redundant; or

(d) is that the employee could not continue to work in the position which the employee held without contravention, (either on the employee's part or on that of his or her employer) of a duty or restriction imposed by or under an enactment.[120]

(3) In paragraph (2)(a) –

(a) "capability", in relation to an employee, means the employee's capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

(4) Where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall –

(a) depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) be determined in accordance with equity and the substantial merits of the case.

(5) Paragraph (4) shall be subject to Articles 63 and 65 to 72.

65 Dismissal on grounds related to union membership or activities

(1) For the purposes of this Part the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee –

(a) was, or proposed to become, a member of a trade union;

(b) had taken part, or proposed to take part, in the activities of a trade union at an appropriate time, or in any action by a trade union in contemplation or furtherance of an employment dispute (not being action by way of conduct that is specified in a code of practice approved under Article 25 of the Employment Relations (Jersey) Law 2007 as unreasonable conduct when done in contemplation or furtherance of an employment dispute); or

(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.[121]

(2) In paragraph (1)(b) "an appropriate time" means –

(a) a time outside the employee's working hours; or

(b) a time within the employee's working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible for the employee to take part in the activities of a trade union,

and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his or her contract of employment, the employee is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal was –

(a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by the employee's contract of employment or in writing) that, in the event of his or her not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, the employee must make one or more payments; or

(b) the employee's objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his or her contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), the employee's employer is entitled to deduct one or more sums from the remuneration payable to the employee in respect of his or her employment,

the reason shall be treated as falling within paragraph (1)(c).

(4) References in this Article to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

66 Selection for redundancy on grounds related to union membership or activities

Where the reason or principal reason for the dismissal of an employee was that he or she was redundant, but it is shown –

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and

(b) that the reason (or, if more than one, the principal reason) why the employee was selected for dismissal was one of those specified in Article 65,

the dismissal shall be regarded as unfair for the purposes of this Part.

67 Dismissal for family or other reasons[122]

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason is connected with –

(a) the pregnancy of the employee;

(b) the fact that the employee has given birth to or adopted a child;

(c) the fact that an employee changed or sought to change his or her hours, times or place of work under Part 3A or 3B;

(d) the fact that the employee took, or sought to take, time off under Part 5A;

(e) the fact that the employee has not carried out work for her employer during his or her parental leave period, or made contact with his or her employer during that period; or

(f) the fact that the employee sought to take or avail himself or herself of any of the benefits of parental leave or the terms of his or her employment preserved under Part 5A.[123]

(2) An employee who is dismissed shall also be regarded for the purposes of this Part as unfairly dismissed if –

(a) the reason (or, if more than one, the principal reason) is that the employee was redundant;

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer; and

(c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason connected with any of the reasons referred to in paragraph (1)(a), (b), (c), (d), (e) or (f).

(3) Paragraph (2) does not apply in relation to an employee if –

(a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit the employee to return to a job which is both suitable for the employee and appropriate for him or her to do in the circumstances;

(b) an associated employer offers the employee a job of that kind; and

(c) the employee accepts or unreasonably refuses that offer.

(4) Where, on a complaint of unfair dismissal, any question arises as to whether the operation of paragraph (2) is excluded by the provisions of paragraph (3), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

(5) The States may by Regulations amend the reasons, or circumstances, in which an employee shall be regarded for the purposes of this Part as unfairly dismissed.

68 Assertion of statutory right

(1) Subject to Article 71, an employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –

(a) brought proceedings against the employer to enforce a right of the employee's which is a relevant statutory right; or

(b) alleged that the employer had infringed a right of the employee's which is a relevant statutory right.

(2) It is immaterial for the purposes of paragraph (1) –

(a) whether or not the employee has the right; or

(b) whether or not the right has been infringed,

but, for that paragraph to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for paragraph (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what was the right claimed to have been infringed.

(4) The following are relevant statutory rights for the purposes of this Article –

(a) any right conferred by this Law for which the remedy for its infringement is by way of a complaint or reference to the Tribunal; and

(b) the right conferred by Article 26.

69 The minimum wage

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that –

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee to which this Article applies; or

(b) the employer was prosecuted for an offence under Article 35 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or

(c) the employee qualifies, or will or might qualify, for the minimum wage or for a particular rate of the minimum wage.

(2) It shall be immaterial for the purposes of paragraph (1)(a) or (b) –

(a) whether or not the employee has the right; or

(b) whether or not the right has been infringed,

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this Article applies –

(a) any right conferred by, or by virtue of, any provision of Part 4 for which the remedy for its infringement is by way of a complaint to the Tribunal; and

(b) any right conferred by Article 26.

70 Redundancy

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and

(c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was any one of those specified in –

(i) Article 68(1) (read with Article 68(2) and (3)), or

(ii) Article 69(1) (read with Article 69(2)).

70A Dismissal by reason of discrimination[124]

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason or principal reason for the dismissal constitutes an act of discrimination against the employee prohibited by the Discrimination Law.

71 Replacements

(1) Where this Article applies to an employee he or she shall be regarded for the purposes of Article 64(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This Article applies to an employee where –

(a) on engaging the employee the employer informs the employee in writing that his or her employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy, childbirth or adoption, including but not limited to absence because of parental leave under Part 5A; and

(b) the employer dismisses the employee in order to make it possible to give work to the other employee.[125]

(3) This Article also applies to an employee where –

(a) on engaging the employee the employer informs the employee in writing that his or her employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds; and

(b) the employer dismisses the employee in order to make it possible to allow the resumption of work by the other employee.

(3A) This Article also applies to an employee where –

(a) on engaging the employee the employer informs him or her in writing that his or her employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly because of service as a reservist within the meaning given by Part 5B; and

(b) the employer dismisses the employee to make it possible to allow the resumption of work by the other employee.[126]

(4) Article 64(4) shall not apply in a case to which this Article applies.

72 Pressure on employer to dismiss unfairly

(1) This Article shall apply where there falls to be determined for the purposes of this Part a question –

(a) as to the reason, or principal reason, for which an employee was dismissed;

(b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 64(1)(b); or

(c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing the employee.

(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Exclusion of right

73 Qualifying period and hours of employment

(1) Subject to the provisions of paragraphs (2) to (4), Article 61 shall not apply to the dismissal of an employee unless the employee has been continuously employed for a period of not less than 26 weeks or such other period as may be prescribed, computed in accordance with Article 57, ending with the effective date of termination.

(2) Paragraph (1) shall not apply if Article 65, 66, 67(1) or (2), 68(1), 69(1), 70 or 70A applies.[127]

(2A) Paragraph (1) shall not apply if the reason or principal reason for the dismissal is, or is connected with, the employee's membership of a reserve force (as defined in Article 55U).[128]

(3) [129]

(4) [130]

74 Upper age limit[131]

(1) Article 61 shall not apply to the dismissal of an employee if on or before the effective date of termination the employee has attained –

(a) in a case where –

(i) in the undertaking in which the employee was employed there was a common retiring age for men and women holding the position held by the employee, and

(ii) that retiring age was higher than pensionable age,

that retiring age;

(b) in a case where –

(i) in the undertaking in which the employee was employed there were different retiring ages for men and women holding the position held by the employee, and

(ii) the higher of the retiring ages is greater than pensionable age,

that higher retiring age; and

(c) in any other case, pensionable age.

(2) Paragraph (1) does not apply if Article 65, 66, 67(1) or (2), 68(1), 69(1), 70 or 70A applies.

(3) In this Article "pensionable age" has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974.

(4) This Article applies only to a dismissal where the effective date of termination is before 1st September 2018.

75 Lower age limit

Article 61 shall not apply to the dismissal of an employee unless on the effective date of termination the employee is no longer of compulsory school age.

CHAPTER 2

REMEDIES FOR UNFAIR DISMISSAL

76 Complaints to the Tribunal

(1) Subject to Article 80(2), a complaint may be presented to the Tribunal against an employer by any person that he or she was unfairly dismissed by the employer.

(2) Subject to paragraph (3), the Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal –

(a) before the end of the period of 8 weeks beginning with the effective date of termination; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

(3) Where a dismissal is with notice, the Tribunal shall consider a complaint under this Article if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in paragraph (3), the provisions of this Law, so far as they relate to unfair dismissal, shall have effect as if –

(a) references to a complaint by a person that he or she was unfairly dismissed by his or her employer included references to a complaint by a person that the person's employer has given the person notice in such circumstances that the person will be unfairly dismissed when the notice expires;

(b) references to reinstatement included references to the withdrawal of the notice by the employer;

(c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice; and

(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

77 Remedies[132]

(1) Where, on a complaint under Article 76, the Tribunal finds that the grounds of complaint are well-founded it shall, if the complainant wishes, consider whether to make a direction for continued employment under Article 77A.

(2) If no direction is made under Article 77A, the Tribunal shall make an award of compensation calculated in accordance with Article 77F.

77A Direction for continued employment[133]

The Tribunal may make a direction for continued employment as follows –

(a) a direction that the employer reinstate the complainant in accordance with Article 77B; or

(b) a direction that the employer re-engage the complainant in other employment in accordance with Article 77C.

77B Direction for reinstatement[134]

(1) A direction for reinstatement is a direction that the employer shall treat the complainant in all respects as if the dismissal had not taken place, subject to paragraphs (3) and (6).

(2) On making a direction for reinstatement, the Tribunal shall specify –

(a) any rights and privileges (including seniority and pension rights) which must be restored to the complainant upon reinstatement; and

(b) the date by which the direction must be complied with.

(3) A direction shall include any amount payable by the employer in respect of any benefit the complainant might reasonably be expected to have had but for the dismissal, excluding arrears of pay, during the period between the effective date of termination and the date of reinstatement.

(4) For the purposes of paragraph (3), "pay" excludes –

(a) any contributions payable by the employer in respect of the complainant to any superannuation scheme or any bona fide pension scheme or any other scheme for the benefit of employees or for the benefit of any spouse or surviving spouse, or any civil partner or surviving civil partner, of such employees or of employees' children or other dependents;

(b) any bonus the complainant might reasonably be expected to receive during his or her employment by way of remuneration. [135]

(5) For the purposes of paragraph (4)(b), "bonus" does not include tips, commission or similar payments.

(6) If the complainant would have benefited from an improvement in the terms and conditions of employment had the dismissal not taken place, a direction for reinstatement shall require the complainant to benefit from that improvement as if the improvement were included in the terms and conditions of employment from the date on which the complainant is reinstated.

77C Direction for re-engagement[136]

(1) A direction for re-engagement is a direction, on such terms as the Tribunal thinks fit, that the complainant be engaged by the employer, or by a successor of the employer, or by an associated employer as defined in Article 79(7), in employment comparable to that from which the dismissal took place or other suitable employment.

(2) On making a direction for re-engagement, the Tribunal shall specify the terms on which the re-engagement is to take place, including –

(a) the identity of the employer;

(b) the nature of the employment;

(c) the remuneration for the employment;

(d) any amount payable by the employer in respect of any benefit the complainant might reasonably be expected to have had but for the dismissal, excluding arrears of pay, for the period between the effective date of termination and the date of reinstatement.

(e) any rights and privileges (including seniority and pension rights) which must be restored to the complainant upon reinstatement; and

(f) the date by which the direction must be complied with.

(3) For the purposes of paragraph (2)(d), "pay" excludes –

(a) any contributions payable by the employer in respect of the complainant to any superannuation scheme or any bona fide pension scheme or any other scheme for the benefit of employees or for the benefit of any spouse or surviving spouse, or any civil partner or surviving civil partner, of such employees or of employees' children or other dependents; and

(b) any bonus the complaint might reasonably be expected to receive during his or her employment by way of remuneration. [137]

(4) For the purposes of paragraph (3)(b), "bonus" does not include tips, commission or similar payments.

77D Choice of direction[138]

(1) If the complainant wishes the Tribunal to consider whether to make a direction for continued employment under Article 77A, the Tribunal shall consider first whether to make a direction for reinstatement.

(2) In exercising its discretion under Article 77A(a), the Tribunal shall take into account –

(a) whether the complainant wishes to be reinstated;

(b) whether it is practicable for the employer to comply with a direction for reinstatement; and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to direct the reinstatement.

(3) If the Tribunal decides not to make a direction for reinstatement it shall then consider whether to make a direction for re-engagement.

(4) In exercising its discretion under Article 77A(b) the Tribunal shall take into account –

(a) any wish expressed by the complainant as to the nature of the direction to be made;

(b) whether it is practicable for the employer or a successor of the employer or an associated employer within the meaning of Article 79(7) (as the case requires) to comply with a direction for re-engagement; and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to direct that person's re-engagement and (if so) on what terms.

(5) Except in a case where the Tribunal takes into account contributory fault under paragraph (4)(c) it shall, if it directs re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as a direction for reinstatement.

(6) Where in any case an employer has engaged a permanent replacement for the complainant, the Tribunal shall not take that fact into account in determining, for the purposes of paragraph (2)(b) or (4)(b), whether it is practicable for the employer to comply with a direction for reinstatement or re-engagement.

(7) Paragraph (6) does not apply where the employer shows –

(a) that it was not practicable for the employer to arrange for the complainant's work to be done without engaging a permanent replacement; or

(b) that –

(i) the employer engaged the permanent replacement after the lapse of a reasonable period without having heard from the complainant whether the complainant wished to be reinstated or re-engaged, and

(ii) when the employer engaged the permanent replacement it was no longer reasonable for the employer to arrange for the complainant's work to be done except by a permanent replacement.

77E Enforcement of direction[139]

(1) The Tribunal shall make an award of compensation, to be paid by the employer to the complainant, if –

(a) a direction under Article 77A is made and the complainant is reinstated or re-engaged; but

(b) the terms of the direction are not fully complied with.

(2) The amount of the compensation shall be such as the Tribunal thinks fit of an amount up to 26 weeks' pay.

(3) If a direction under Article 77A is made but the complainant is not reinstated or re-engaged, the Tribunal shall make –

(a) an award of compensation for unfair dismissal calculated in accordance with Article 77F; and

(b) an additional award of compensation of an amount up to 26 weeks' pay,

to be paid by the employer to the complainant.

(4) Paragraph (3)(b) does not apply where the employer satisfies the Tribunal that it was not practicable to comply with the direction.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the Tribunal shall not take that fact into account in determining for the purposes of paragraph (4) whether it was practicable to comply with the direction for reinstatement or re-engagement unless the employer shows that it was not practicable to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(6) Where in any case the Tribunal finds that the complainant has unreasonably prevented a direction under Article 77A from being complied with, in making an award of compensation for unfair dismissal the Tribunal shall take that conduct into account as a failure on the part of the complainant to mitigate loss.

77F Compensation awards[140]

(1) Subject to paragraph (3), an award under Article 77(2) or Article 77E(3)(a) shall be calculated in accordance with an Order made under paragraph (2).

(2) The Minister shall by Order specify a scale of compensation which may be awarded by the Tribunal under Article 77(2) or Article 77E(3)(a).

(3) An award under Article 77(2) or Article 77E(3)(a) may be reduced by such amount as the Tribunal considers just and equitable having regard to any of the circumstances described in paragraphs (4), (5), (7), (8), (9) and (10).

(4) The Tribunal finds the complainant has either –

(a) unreasonably refused an offer by the employer which, if accepted, would have had the effect of reinstating the complainant in the complainant's former employment; or

(b) accepted such offer as is described in sub-paragraph (a) in circumstances where the Tribunal may reasonably conclude that at the time the offer was accepted the complainant intended to terminate the employment as soon as reasonably practicable.

(5) The Tribunal considers that any conduct of the complainant before dismissal (or, where the dismissal was with notice, before the notice was given) that contributed directly to the dismissal was such that reduction of the award is just and equitable.

(6) For the purposes of paragraph (5), the Tribunal may take into account conduct committed whilst in employment which came to light after notice was given or the act of dismissal occurred.

(7) The complainant has agreed to receive a payment by way of settlement of the complaint (whether or not the dismissal is related to redundancy).

(8) The complainant has been awarded a redundancy payment under any enactment or is entitled to a redundancy payment under his or her contract of employment.

(9) The complainant has refused an offer by the employer made before commencement of proceedings before the Tribunal for an amount equal to

the maximum award that the Tribunal could award in respect of the complainant under Article 77(2) or Article 77E(3)(a) (as the case requires).

(10) Any circumstances that the Tribunal considers would be just and equitable to take into account.

77G Continuity of employment[141]

If, following a direction under Article 77A, a complainant is reinstated or re-engaged by his or her employer or by a successor or associated employer as defined in Article 79(7) (as the case requires), the period beginning with the effective date of termination and ending with the date of reinstatement or re-engagement –

(a) does not break the continuity of the period of employment; and

(b) counts in computing the period of employment.

77H Transitional provision[142]

(1) In this Article, "the specified date" means the date the Employment (Amendment No. 4) (Jersey) Law 2009 comes into force.

(2) If, before the specified date, a complaint has been presented to the Tribunal under Article 76 and has not been finally determined, the Tribunal shall deal with that complaint on or after the specified date as if the Employment (Amendment No. 4) (Jersey) Law 2009 had not come into force.

CHAPTER 3

SUPPLEMENTARY

78 Death of employer or employee

(1) Where –

(a) an employer has given notice to an employee to terminate the employee's contract of employment; and

(b) before that termination the employee or the employer dies,

this Part shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where –

(a) an employee's contract of employment has been terminated;

(b) by virtue of Article 63(2) or (4) a date later than the effective date of termination as defined in paragraph (1) of that Article is to be treated for certain purposes as the effective date of termination; and

(c) the employer or the employee dies before that date,

Article 63(2) or (4) shall apply as if the notice referred to in that paragraph as required by Article 56 expired on the date of the death.

(3) Where an employee has died, if the Tribunal finds that the grounds of the complaint are well-founded, the case shall be treated as falling within Article 77.

PART 7A[143]

DISCIPLINARY AND GRIEVANCE HEARINGS

78A Right to be represented

(1) This Article applies where –

(a) an employer requires or requests an employee to attend a disciplinary or grievance hearing; and

(b) the employee tells the employer that he or she wishes to be represented at the hearing.

(2) Where this Article applies, the employer must permit the employee to be represented at the hearing by one representative chosen by the employee who is –

(a) an employee or an official of a trade union; or

(b) another employee of the employer,

if the location of the proposed representative at the time of the request does not make the request unreasonable.

(3) The employer must permit the employee's representative –

(a) to address the hearing so as to put the employee's case, to sum up that case and to respond on the employee's behalf to any view expressed at the hearing; and

(b) to confer with the employee during the hearing.

(4) However, paragraph (3) does not require the employer to permit the employee's representative –

(a) to answer questions on behalf of the employee;

(b) to address the hearing if, at the hearing, the employee indicates that he or she does not wish the representative to do so; or

(c) to use the powers conferred by that paragraph in a way that prevents the employer from explaining his or her case or prevents any other person at the hearing from making a contribution to it.

(5) If –

(a) an employee has a right under this Article to be represented at a hearing;

(b) the employee's chosen representative will not be available at the time proposed for the hearing by the employer; and

(c) the employee proposes an alternative time within the 5 working days immediately after the day proposed by the employer that is reasonable for both parties,

the employer must postpone the hearing to the time proposed by the employee.

(6) Where the employee's chosen representative is another employee of the employer –

(a) the employer must permit the representative to take a reasonable amount of time off during working hours, without loss of pay, to prepare for the hearing and to represent the employee at the hearing; and

(b) any activities of the representative undertaken in accordance with this Article shall be taken to be activities of a trade union to which Article 65(1)(b) applies.

(7) In this Article –

"disciplinary hearing" means a hearing that could result in –

(a) the administration of a formal written warning to an employee by his or her employer;

(b) the taking of some other formal disciplinary action in respect of an employee by his or her employer; or

(c) the confirmation of a warning administered under paragraph (a) or the confirmation of any other disciplinary action taken under paragraph (b);

"grievance hearing" means a hearing that concerns the performance of a duty by an employer in relation to an employee;

"trade union" means a trade union registered in accordance with the Employment Relations (Jersey) Law 2007;

"working day" means a business day as defined by the Public Holidays and Bank Holidays (Jersey) Law 1951.[144]

78B Complaints to Tribunal

(1) An employee may present a complaint to the Tribunal that his or her employer has failed, or threatened to fail, to comply with Article 78A(2), (3) or (5).

(2) The Tribunal shall not consider such a complaint unless it is presented within –

(a) the 8 weeks immediately following the failure or threat; or

(b) such further period as the Tribunal may, in the interests of justice, consider reasonable.

(3) If the Tribunal finds that a complaint under this Article is well-founded it must –

(a) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay; and

(b) declare that any action taken against the employee by the employer, other than the dismissal of the employee, is void.[145]

PART 8

CONTRACTING OUT ETC. AND REMEDIES

79 Restrictions on contracting out

(1) A provision in a contract (whether a relevant agreement or not) shall be void in so far as it purports –

(a) to exclude or limit the operation of any provision of this Law; or

(b) to preclude a person from bringing any proceedings under this Law before the Tribunal,

except as permitted by this Law.

(2) Paragraph (1) shall not apply to an agreement to refrain from instituting or continuing proceedings before the Tribunal where a conciliation officer has taken action under Article 4 of the Jersey Advisory and Conciliation (Jersey) Law 2003 or if the conditions regulating compromise agreements under this Law are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2) the conditions regulating compromise agreements under this Law are that –

(a) the agreement must be in writing;

(b) the agreement must relate to the particular proceedings;

(c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the employee's ability to pursue his or her rights before the Tribunal;

(d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Law are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c) –

(a) if the person is a qualified lawyer;

(b) if the person is an officer, official, employee or member of a trade union who has been certified in writing by the trade union as competent to give advice and is authorized to do so on behalf of the trade union;

(c) if the person works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as

competent to give advice and is authorized to do so on behalf of the centre; or

(d) if the person is a person of a description specified in an Order made by the Minister.

(5) A person shall not be a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the employee –

(a) if the person is, is employed by or is acting in the matter for the employer or an associated employer;

(b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer;

(c) in the case of a person within paragraph (4)(c), if the employee makes a payment for the advice received from the person; or

(d) in the case of a person of a description specified in an Order under paragraph (4)(d), if any condition specified in the Order in relation to the giving of advice by persons of that description is not satisfied.

(6) In paragraph (4)(a) "qualified lawyer" means a solicitor or advocate who is entitled to practise as such under Article 2 of the Advocates and Solicitors (Jersey) Law 1997.

(7) In this Article, an employer is an associated employer of another employer if –

(a) each employer is a company or a limited liability company; and

(b) either –

(i) one employer has control of the other, or

(ii) both employers are controlled by the same third person.[146]

80 Remedy for infringement of rights under this Law and under contracts of employment

(1) Subject to Article 76, and notwithstanding Article 86, an employer or an employee may bring proceedings for infringement of any of the rights conferred by this Law by way of complaint or reference to the Tribunal, and Article 86(3) shall apply to any such reference or complaint.

(2) Nothing in this Law shall prevent an employer or an employee from bringing proceedings in the courts for breach of a contract of employment, and on commencement of such proceedings any proceedings before the Tribunal shall be discontinued.

(3) On discontinuance of proceedings before the Tribunal under paragraph (2) the party bringing proceedings in the courts shall indemnify the other party in respect of the other party's costs in relation to the discontinued proceedings before the Tribunal in such sum as the Court shall award.

PART 9

THE TRIBUNAL

81 Establishment of the Tribunal[147]

(1) There is established a Tribunal to be known as the Jersey Employment and Discrimination Tribunal.

(2) The Tribunal shall exercise the jurisdiction conferred on it by or under –

(a) this Law;

(b) the Discrimination Law; and

(c) the Employment Relations (Jersey) Law 2007.

(3) Articles 83, 84, 89, 90, 91, 92, 93, 94 and 95 shall apply to the Tribunal and to proceedings before it when it is exercising jurisdiction conferred on it by or under the Discrimination Law or the Employment Relations (Jersey) Law 2007 as they apply to the Tribunal and to proceedings before it when it is exercising the jurisdiction conferred on it by or under this Law.

82 Constitution, membership and administration of the Tribunal

(1) The States may by Regulations provide for the constitution, membership and administration of the Tribunal.

(2) Regulations made under paragraph (1) may provide for –

(a) the appointment of the Chairman of the Tribunal;

(b) the appointment of members of the Tribunal;

(c) the terms of membership of the Tribunal;

(d) the composition of the body of members to hear applications to the Tribunal;

(e) the remuneration and reimbursement of expenses of members of the Tribunal; and

(f) such matters as may be necessary or convenient for the administration of the Tribunal.

(3) The Regulations may provide for the remuneration of members of the Tribunal to be determined by the Minister by Order.[148]

83 Limitation of civil liability[149]

A conciliation officer, the Secretary of the Tribunal or a member of the Tribunal shall not be liable in damages for anything done or omitted in the discharge, or purported discharge of any functions under this Law, unless it is shown that the act or omission was in bad faith.

84 Declaration of interests, etc.

(1) If a member of the Tribunal has a personal or pecuniary interest, direct or indirect, in a matter which is the subject of an application or reference to a Tribunal on which the member is sitting, the member shall, as soon as practicable after the commencement of the hearing of the application or reference or after the disclosure of the matter in which the member has such an interest, disclose the fact and shall not take any further part in the hearing or in the decision reached as the result of the hearing.

(2) A person who fails to comply with the provisions of paragraph (1) shall be guilty of an offence and liable on conviction to a fine of level 3 on the standard scale.[150]

(3) For the purposes of paragraph (1) a member of the Tribunal shall be treated as having an indirect pecuniary interest if the member or any nominee of the member is a partner or an adviser of, or is a member, employee or adviser of a company or limited liability company or other body which is, or is associated with, a party to the issue which is the subject of the application or reference.[151]

(4) Paragraph (1) shall not apply to an interest in a matter which a member of the Tribunal has as a member of the public.

(5) Where a member of the Tribunal has an indirect pecuniary interest in a matter by reason only of a beneficial interest in the securities of a company or limited liability company or other body and the nominal value of those securities does not exceed one thousandth of the total nominal value of the issued share capital of the company or limited liability company or the body, paragraph (1) shall not prohibit the member from taking part in the hearing and the reaching of the decision as the result of the hearing.[152]

85 Secretary of the Tribunal[153]

(1) The Judicial Greffier shall act as Secretary of the Tribunal.

(2) The Judicial Greffier may delegate, wholly or partly, the function conferred by paragraph (1), to an officer of the Judicial Greffe.

86 Jurisdiction in respect of individual employment disputes[154]

(1) Proceedings may be brought before the Tribunal in respect of an employment dispute to which this Article applies by any party to the dispute, whether or not it has been the subject of conciliation by JACS.

(2) Proceedings may be referred to the Tribunal in respect of an employment dispute to which this Article applies by JACS, a conciliation officer designated by JACS as such under Article 5 of the Jersey Advisory and Conciliation (Jersey) Law 2003, or by a person appointed by JACS under Article 4 of that Law to offer assistance to the parties.

(3) This Article shall apply to an individual employment dispute which involves a claim in respect of which a court in Jersey would under the law for the time being in force have jurisdiction, except an employment dispute which –

(a) has been the subject of an award after arbitration in accordance with Article 6 of the Jersey Advisory and Conciliation (Jersey) Law 2003;

(b) includes a claim for damages for personal injuries; or

(c) includes a claim for breach of a contractual term –

(i) requiring the employer to provide living accommodation for the employee,

(ii) imposing an obligation on the employer or the employee in connection with living accommodation,

(iii) relating to intellectual property,

(iv) imposing an obligation of confidence, or

(v) which is a covenant in restraint of trade.

(4) [155]

(5) Subject to paragraph (4), this Article shall apply to such individual employment disputes as may be provided by this Law or any other enactment.[156]

(6) Subject to Article 87 the Tribunal shall not in any proceedings order the payment to an individual of an amount exceeding such sum as may be prescribed from time to time.

87 Regulations

The States may by Regulations –

(a) provide that proceedings in respect of a claim, other than proceedings which may be brought in accordance with Article 86, may be brought before the Tribunal;

(b) impose exceptions, conditions and reservations in respect of proceedings which may be brought before the Tribunal under this Law; and

(c) amend the period for making a reference or presenting a complaint (as the case may be) to the Tribunal, specified in any of the relevant provisions of this Law.[157]

88 Awards in individual employment disputes[158]

(1) Where proceedings in respect of an individual employment dispute have been brought before, or referred to, the Tribunal and the Tribunal is of opinion that there are recognized terms and conditions applicable to the case and that the employer or the employee concerned is not observing –

(a) those terms and conditions; or

(b) terms and conditions of employment which, in the opinion of the Tribunal, are not less favourable to the employee than those terms and conditions,

it may by its award require the employer or the employee to observe the recognized terms and conditions or such terms and conditions of

employment as may be determined by it to be not less favourable to the employee than the recognized terms and conditions.[159]

(2) Where an award has been made by the Tribunal, as from the date of the award or from such other date as the Tribunal may direct, not being earlier than the date on which the employment dispute to which the award relates first arose, it shall be a term of the contract between the employer and the employee or employees to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award until varied by subsequent agreement between the parties or by a subsequent award of the Tribunal, or until different terms and conditions of employment in respect of the employee or employees concerned are settled through the machinery of negotiation, mediation, conciliation or arbitration for the settlement of terms and conditions of employment in the trade or industry or the undertaking in which the employee or those employees are employed.[160]

(3) Where –

(a) proceedings in respect of an individual employment dispute have been brought before, or referred to, the Tribunal;

(b) the dispute is in relation to money which may be due to be paid under the terms of a contract of employment entered into between the parties; and

(c) the Tribunal determines that a sum of money is due to one party from the other,

the Tribunal may by its award require that sum of money to be paid.

(4) Where proceedings in respect of an individual employment dispute, or proceedings for infringement of any of the rights conferred by this Law, have been brought before, or referred to, the Tribunal, the Tribunal may by its award require any person to take, or refrain from taking, any action specified in the award.[161]

(5) However, no award shall, whether by way of –

(a) a requirement as to the specific performance or specific implementation of a contract of employment; or

(b) a requirement that a person should refrain from committing a breach or threatened breach of such a contract,

have the effect of compelling an employee to do any work or attend at any place for the doing of any work.[162]

89 Procedure

(1) The Tribunal shall have, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in the Royal Court and, without limiting the generality of the preceding provisions of this Article, may –

(a) issue a summons to any person (including a party to the proceedings) requiring the person to appear at the time and place mentioned therein to testify to all matters within the person's knowledge relative to the subject or proceedings before the Tribunal, and to bring with him or her and produce any document, book or papers that the person has in his or her possession or under his or her control relative to such subject;

(b) administer oaths and examine any person on oath, affirmation or otherwise;

(c) require a party in writing to furnish to the Tribunal a written answer to any question if it considers –

(i) that answer of the party to that question may help to clarify any issue likely to arise for determination in the proceedings, and

(ii) that it would be likely to assist the progress of the proceedings for that answer to be available to the Tribunal before the hearing,

and appoint the time within which the answer is to be furnished;

(d) notwithstanding the offences in Article 95(1)(b) and (1)(c)(ii), draw an adverse inference from the failure, without reasonable excuse of any witness to attend or of any person to produce any documents, when so requested;

(e) for the purposes of making a determination, take independent expert advice.[163]

(2) In this Article "document" includes information held in electronic form.

90 Publicity

(1) Subject to paragraph (2) or to an Order made under Article 91(3), the Tribunal shall sit in public.[164]

(2) Despite paragraph (1) the Tribunal may sit in private for the purposes of hearing evidence from any person which in the opinion of the Tribunal is likely to consist of –

(a) information which the person could not disclose without contravening a prohibition imposed by or under any enactment;

(b) information which has been communicated to the person in confidence or which the person has otherwise obtained in consequence of the confidence reposed in him or her by another person; or

(c) information, the disclosure of which would cause substantial injury to any undertaking of the person, or any undertaking in which the person works, for reasons other than its effect on negotiations with respect to the terms of employment, or the conditions of labour, of the persons in the employment of the undertaking in question.

(3) In any case which involves allegations of sexual misconduct the Tribunal may at any time before it issues its decision, either on the application of a

party or of its own motion make a restricted reporting order prohibiting the publication in Jersey of identifying matter in a written publication available to the public or in a programme broadcast in Jersey by television, radio or any other telecommunications or internet service.

(4) When the Tribunal makes an order under paragraph (3) and that case is being dealt with together with any other proceedings, the Tribunal may direct that the order shall apply also in relation to those other proceedings or such part of them as the Tribunal may direct.

(5) The Tribunal shall not make an order under paragraph (3) unless it has given each party an opportunity to advance either written or oral argument.

(6) The Tribunal may revoke an order under paragraph (3) at any time.

(7) If any identifying matter is published in contravention of an order under paragraph (3) –

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of publication in any other written form, the person publishing the matter; and

(c) in the case of matter published in a broadcast programme –

(i) any body corporate engaged in providing the service in which the programme is included, and

(ii) any persons having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable to a fine.

(8) Where a person is charged with an offence under paragraph (7) it shall be a defence to prove that at the time of the alleged offence the person was not aware and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.

(9) [165]

(10) [166]

(11) In this Article –

"identifying matter", in relation to a person, means any matter likely to lead members of the public to identify him or her as a person affected by, or as a party to, the case in question;

"sexual misconduct" means the commission of a sexual offence, sexual harassment or other adverse conduct, of whatever nature, related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed; and

"sexual offence" means –

(a) an offence under the Sexual Offences (Jersey) Law 2018;

(b) any other offence that is a relevant offence within the meaning of the Sex Offenders (Jersey) Law 2010;

(c) an offence of attempting to commit an offence in sub-paragraph (a) or (b);

(d) an offence of conspiracy or incitement to commit an offence in sub-paragraph (a) or (b); or

(e) an offence of aiding, abetting, counselling or procuring an offence in sub-paragraph (a), (b) or (c).[167]

91 Conduct of hearings

(1) Where a complainant or respondent attend a hearing before the Tribunal, they may –

(a) represent themselves; or

(b) be represented or accompanied by any person of their choice.[168]

(2) Part 2 of the Arbitration (Jersey) Law 1998 shall not apply to any proceedings before the Tribunal.

(3) The Minister may by Order make such provision as appears to the Minister to be necessary or expedient with respect to proceedings before the Tribunal.

(4) Orders made under paragraph (3) may, in particular, include provision –

(a) for the reference of employment disputes to the Tribunal;

(b) for the reference of complaints brought under the Discrimination Law;

(c) for the manner in which and time within which proceedings may be brought before the Tribunal;

(d) for the filing and service of documents in relation to proceedings brought before the Tribunal;

(e) for the completion, filing, and service by the complainant and respondent of forms containing such information as may be prescribed in the Order, for the purposes of adducing the facts of the dispute or complaint;

(f) for the hearing, investigation and determination of –

(i) employment disputes, and

(ii) complaints brought under the Discrimination Law;

(g) for the procedures to be adopted where it appears to the Tribunal that proceedings brought before it to which Article 86 applies relate to any act which is prohibited by the Discrimination Law, where a complaint in respect of the act would be referable to the Tribunal under that Law;

(h) for the procedures to be adopted where it appears to the Tribunal that a hearing before it under the Discrimination Law concerns an employment dispute to which Article 86 applies;

(i) for directing the Tribunal as to the circumstances in which a hearing is to be heard in private;

(j) for the manner in which proceedings in respect of a claim before the Tribunal may be disposed of;

(k) for the award of costs or expenses; and

(l) for the registration and proof of decisions, orders and awards of the Tribunal.[169]

(5) The reference of employment disputes or complaints mentioned in paragraph 4(a) and (b) includes the procedures to be followed by the Secretary of the Tribunal in administering the referral and recording of those disputes and complaints.[170]

(6) In this Article, "documents" includes statements of evidence and information held in electronic form.[171]

92 Expenses

All expenses incurred in the administration of this Part shall, subject to the provisions of any Regulations made under Article 87, be defrayed out of the annual income of the States.

93 Enforcement[172]

(1) Where the Tribunal has ordered a person to pay to a complainant –

(a) compensation; or

(b) a sum of money, and

that compensation or sum of money is not paid, the complainant may apply to the Court to recover the compensation or sum as a civil debt.

(2) In paragraph (1), "Court" means –

(a) the Petty Debts Court if the amount of compensation or other sum of money does not exceed the amount in respect of which the Petty Debts Court has jurisdiction; or

(b) the Royal Court, in any other case.

(3) An order of the Tribunal to take any action or to refrain from taking any action, may (subject to Article 88(5)) be enforced on application by the complainant to the Royal Court.

94 Appeals[173]

(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.

95 Offences

(1) A person who without reasonable excuse –

(a) in proceedings before the Tribunal –

(i) makes a statement which the person knows or believes to be false, misleading or deceptive in a material particular,

(ii) recklessly makes a statement which is false, misleading or deceptive in a material particular, or

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or believes to be false, misleading or deceptive in a material particular;

(b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend;

(c) on attending before the Tribunal as a witness, fails, when legally required to do so –

(i) to take the oath or affirmation,

(ii) to produce any document in his or her possession, custody or power, or

(iii) subject to paragraph (2), to answer any question put to him or her; or

(d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court,

shall be guilty of an offence, and shall be liable to imprisonment for a term of 2 years and to a fine.

(2) A person giving evidence to the Tribunal shall not be compellable to answer any question tending to incriminate himself or herself.

(3) In this Article "document" includes information held in electronic form.

PART 10

MISCELLANEOUS

96 Appointment of officers

(1) The Minister –

(a) may appoint officers to act for the purposes of this Law all of whom shall be States' employees within the meaning of Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005; and

(b) may, instead of or in addition to appointing any officer under sub-paragraph (a), arrange with any other Minister or with any body performing functions on behalf of the States, that officers in an administration of the States for which that Minister is assigned responsibility, or officers of that body, shall act for those purposes.[174]

(2) When acting for the purposes of this Law, an officer shall, if so required, produce some duly authenticated document showing his or her authority so to act.

(3) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of this Law does not know that he or she is an officer so acting, the officer shall identify himself or herself as such to that person.

97 Powers of officers

(1) An officer acting for the purposes of this Law shall have power for the performance of his or her duties –

(a) to require the production by a relevant person of any records required to be kept and preserved in accordance with this Law or Regulations made under this Law and to inspect and examine those records and to copy any material part of them;

(b) to require a relevant person to furnish to the officer (either alone or in the presence of any other person, as the officer thinks fit) an explanation of any such records;

(c) to require a relevant person to furnish to the officer (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might

reasonably be needed in order to establish whether this Law, or any notice under this Law, is being or has been complied with; and

(d) to visit any relevant premises in order to exercise any power conferred on the officer by sub-paragraphs (a) to (c).

(2) Without prejudice to paragraph (1) or to any power conferred by this Law, if the Bailiff is satisfied by information on oath by an officer acting for the purposes of this Law that there are reasonable grounds for suspecting that –

(a) there are records such as are referred to in paragraph (1)(a) kept in any premises; or

(b) there is, on any premises, any information, article or record, held in any form, that may be relevant to or associated with information such as is referred to in sub-paragraph (a),

the Bailiff may grant a warrant authorizing that officer, or any other person named in the warrant, to enter and search any premises within one month of the date on which the warrant was granted.[175]

(3) Where a warrant has been granted under paragraph (2), the officer or person named in the warrant shall have power to enter those premises at any time by day, or by night if accompanied by a police officer, and to search for, seize and detain or remove any such information, article or record or any documents relating to any such thing, article or record and, so far as is reasonably necessary for the purpose of such entry, search, seizure, detention or removal, to break open any door, window or container and force and remove any other impediment or obstruction.

(4) No person shall be required under paragraph (1)(b) or (c) to answer any question or furnish any information which might incriminate the person or –

(a) if married, the person's spouse; or

(b) if in a civil partnership, the person's civil partner.[176]

(5) The powers conferred by paragraph (1) shall include power, on reasonable written notice, to require a relevant person –

(a) to produce any such records as are mentioned in paragraph (1)(a) to an officer at such time and place as may be specified in the notice; or

(b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in paragraph (1)(b) or (c).

(6) In this Article "relevant person" means any person whom an officer acting for the purposes of this Law has reasonable cause to believe to be –

(a) the employer or former employer of an employee;

(b) a person who for the purposes of Article 36 is the agent or the principal;

(c) a person who supplies work to an individual who qualifies for the minimum wage;

(d) an employee, servant or agent of a person falling within paragraph (a), (b) or (c); or

(e) a person who qualifies for the minimum wage.

(7) In this Article "relevant premises" means any premises which an officer acting for the purposes of this Law has reasonable cause to believe to be –

(a) premises at which an employer carries on business; or

(b) premises which an employer uses in connection with his or her business (including any place used, in connection with that business, for giving out work to home workers, within the meaning of Article 36).

(8) A person who –

(a) wilfully delays or obstructs an officer acting for the purpose of this Law in the exercise of any power under this Law; or

(b) refuses or neglects –

(i) to answer any question or to furnish any information,

(ii) to furnish any information, or

(iii) to produce any document (including a document held in electronic form),

when required to do so under this Article,

shall be guilty of an offence and liable to a term of imprisonment 2 years and to a fine.

98 Transfer of information

(1) [177]

(2) Information obtained by an officer who is authorized under Article 34 of the Social Security (Jersey) Law 1974 in the course of carrying out his or her functions or duties under that Law may be supplied by the officer to an officer appointed or acting under Article 96, or to the Attorney General, for the purposes of preventing, detecting, or bringing a prosecution in respect of an offence under this Law.

99 Information obtained by officers

(1) This Article shall apply to any information obtained by an officer acting for the purposes of this Law, whether by virtue of Article 97(1)(a) or (b).

(2) Information to which this Article applies vests in the Minister.

(3) Information to which this Article applies may be used for any purpose relating to this Law by –

(a) the Minister; or

(b) any relevant authority whose officer obtained the information.

(4) Information to which this Article applies –

(a) may be supplied by, or with the authorization of, the Minister to any relevant authority for any purpose relating to this Law; and

(b) may be used by the recipient for any purpose relating to this Law.

(5) Information supplied under paragraph (4) –

(a) shall not be supplied by the recipient to any other person or body unless it is supplied for the purposes of any civil or criminal proceedings relating to this Law; and

(b) shall not be supplied in those circumstances without the authorization of the Minister.

(6) This Article shall not limit the circumstances in which information may be supplied or used apart from this Article.

(7) Paragraph (2) shall not affect the title or rights of –

(a) any person whose property the information was immediately before it was obtained as mentioned in paragraph (1); or

(b) any person claiming title or rights through or under such a person otherwise than by virtue of any power conferred by or under this Law.

(8) In this Article "relevant authority" means any Minister or other body which is party to arrangements made with the Minister which are in force under Article 96(1)(b).

100 Publicity

(1) The Minister shall arrange for information about this Law and Regulations and Orders under it to be published by such means as appear to the Minister to be most appropriate for drawing the provisions of this Law and those Regulations and Orders to the attention of persons affected by them.

(2) The information required to be published under paragraph (1) includes, in particular, information about –

(a) the hourly rate for the time being prescribed under Article 16;

(b) the method or methods to be used for determining under Article 17 the hourly rate at which a person is to be regarded for the purposes of this Law as remunerated by his or her employer in respect of his or her work in any pay reference period; and

(c) the methods of enforcing rights under this Law.

101 Application[178]

(1) This Law applies to an employment which requires the person to work wholly or mainly in Jersey.

(2) This Law also applies to an employment on a Jersey ship unless –

(a) the employment is wholly outside Jersey; or

(b) the employee is not ordinarily resident in Jersey.

(3) In this Article –

(a) "Jersey" includes the territorial waters adjacent to Jersey; and

(b) "Jersey ship" has the meaning given in Article 2 of the Shipping (Jersey) Law 2002.

102 Law governing employment

For the purposes of this Law it is immaterial whether the law which (apart from this Law) governs any person's employment is the law of Jersey or not.

103 Offences by bodies corporate

(1) Where an offence under this Law, which has been committed by a limited liability partnership or a 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 partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or

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

he or she, as well as the partnership or body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

104 Regulations and Orders

(1) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed or provided for under this Law by Order of that Minister.

(2) The Minister may by Order make provision for this Law to apply, with or without modifications, or to cease to apply to a prescribed class or classes of individuals either as employers or employees.

(3) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be specified or provided for under this Law by Regulations.

(3A) The States may by Regulations amend Part 3A.[179]

(3B) [180]

(4) Except to the extent that this Law makes provision to the contrary, an Order or Regulations made under this Law may –

(a) make different provision in relation to different cases, circumstances or descriptions of person; and

(b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever.

(5) Paragraph 4(a) shall not have effect in relation to Orders under Article 16(3).

(6) Regulations made under this Law may create an offence punishable by a fine up to level 3 on the standard scale.[181]

(7) Regulations made under this Law may contain provisions modifying any enactment in consequence of the enactment of this Law.

(8) [182]

(9) The power to make Regulations or Orders includes power to make any supplementary, incidental, consequential, transitional, transitory or saving provision which appear to the States or the Minister, as the case may be, to be necessary or expedient for the purposes of the Regulations or Order.[183]

105 Transitional provisions and savings

Schedule 3 shall have effect.

106 Citation

This Law may be cited as the Employment (Jersey) Law 2003.

SCHEDULE 1[184]

(Articles 13,15N, 55C, 55E, 60C, 60I, 60K, 60L, 60P and 60R)

A WEEK'S PAY

1 General

(1) This paragraph and paragraphs 2 and 3 shall apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to paragraph 2, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay shall be the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his or her normal working hours in a week.

(3) Subject to paragraph 2, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week's pay shall be the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 52 weeks ending –

(a) where the calculation date is the last day of a week, with that week; and

(b) otherwise, with the last complete week before the calculation date.

(4) In this paragraph references to remuneration varying with the amount of work done shall not include remuneration which may include any commission or similar payment which varies in amount.

2 Remuneration varying according to time of work

(1) This paragraph shall apply if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.

(2) The amount of a week's pay shall be the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.

(3) For the purposes of subparagraph (2) –

(a) the average number of weekly hours shall be calculated by dividing by 52 the total number of the employee's normal working hours during the relevant period of 52 weeks; and

(b) the average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of 52 weeks.

(4) In subparagraph (3) "the relevant period of 52 weeks" shall mean the period of 52 weeks ending –

(a) where the calculation date is the last day of a week, with that week; and

(b) otherwise, with the last complete week before the calculation date.

3 Supplementary

(1) For the purposes of paragraphs 1 and 2, in arriving at the average hourly rate of remuneration, only –

(a) the hours when the employee was working; and

(b) the remuneration payable for, or apportionable to, those hours,

shall be brought in.

(2) If for any of the 52 weeks mentioned in paragraphs 1 and 2 no remuneration within subparagraph (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to 52 the number of weeks of which account is taken.

(3) Where –

(a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours; and

(b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within paragraph 4(3), in normal working hours falling within the number of hours without overtime),

account shall be taken of that remuneration as if the work had been done in normal working hours (or, in a case within paragraph 4(3), in normal working hours falling within the number of hours without overtime) and the amount of that remuneration had been reduced accordingly.

4 Employments with no normal working hours

(1) This paragraph shall apply where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of 52 weeks ending –

(a) where the calculation date is the last day of a week, with that week; and

(b) otherwise, with the last complete week before the calculation date.

(3) In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to 52 the number of weeks of which account is taken.

5 The calculation date

For the purposes of this Schedule –

(a) in the case of payment in respect of periods of leave to which an employee is entitled under Article 11, the calculation date shall be the first day of the period of leave in question;

(b) in the case of an employee making an application –

(i) under Article 15A, for flexible working arrangements, or

(ii) under Article 15H, to vary terms and conditions of employment for the purpose of breastfeeding,

the calculation date shall be the day on which the application was made;

(ba) in the case of an employee taking time off under Article 15G, the calculation date shall be –

(i) where the day before the day on which the time off begins falls within a parental leave period, the day before the beginning of that period, or

(ii) otherwise, the day before the day on which the time off begins;

(bb) in the case of an employee requiring facilities to be provided for the purpose of breastfeeding under Article 15K, the calculation date shall be the day before the day on which the employee gave notice of the requirement to the employer;

(c) in the case of an employee taking time off under Article 55C, the calculation date shall be the day of the appointment;

(d) in the case for which Article 55E(2) provides, the calculation date shall be the day before the commencement of the employee's paid parental leave period;

(e) in all other cases under Part 5A, the calculation date shall be the day before the first day of the period of leave in question;

(ea) in the case of a complaint to the Tribunal under Article 55X, the calculation date shall be the last day of work for the former employer before the first day of the reservist's service;

(f) in the case of a redundancy payment under Article 60C, the calculation date shall be the effective date of termination; and

(g) in the case of a claim for a breach of Article 60O or 78A, the calculation date shall be the date of the complaint to the Tribunal.

6 New employments and other special cases.

(1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Schedule, the amount of a week's pay shall be the amount which fairly represents a week's pay.

(2) In determining that amount the employer –

(a) shall apply as nearly as may be the preceding provisions of this Schedule; and

(b) shall have regard to the amount of the remuneration received by the employee in respect of the employment in question.

7 Continuous employment

In arriving at average weekly remuneration under this Schedule, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of the provisions of any contract or enactment, a period of employment with a former employer counts as part of the employee's continuous period of employment.

8 The minimum wage

If the calculation of the pay of an employee in accordance with the foregoing provisions of this Schedule results in a rate which is lower than the minimum wage the amount of a week's pay for that employee shall be at the rate of the minimum wage.

9 Time off for ante-natal care or paid parental leave

(1) This paragraph applies in the case of an employee who is –

(a) entitled to take time off under Article 55B; or

(b) required to take paid parental leave under Article 55E.

(2) This Schedule applies to an employee in respect of whom paragraph (1) applies with the following modifications –

(a) for the period of 52 weeks mentioned in paragraphs 1, 2, 3 and 4 there shall be substituted the period of 12 weeks;

(b) paragraphs 3(2), 4(3) and 8 shall be deleted.

SCHEDULE 2

(Article 21(10))

THE EMPLOYMENT FORUM

1 Membership

(1) The Employment Forum appointed under Article 21(9) (in this Schedule referred to as the "Forum") shall consist of a chairman and 8 other members appointed by the Minister.

(2) In appointing members, the Minister shall have regard to the desirability of securing that there is such a balance as the States consider appropriate between –

(a) members with knowledge or experience of, or interest in, trade unions or matters relating to employees generally;

(b) members with knowledge or experience of, or interest in, employers' associations or matters relating to employers generally; and

(c) members with other relevant knowledge or experience.

(3) Members shall hold and vacate office in accordance with their terms of appointment, subject to the provisions contained in sub-paragraphs (4) to (6).

(4) A member may resign his or her membership by giving notice to the Minister.

(5) A person who ceases to be a member shall be eligible for re-appointment.

(6) The Minister shall by notice to the member concerned remove from office a member who –

(a) has become bankrupt, has made an arrangement with his or her creditors, has had his or her estate sequestrated, has granted a trust deed for his or her creditors or has made a composition contract with his or her creditors;

(b) has been absent from 2 or more consecutive meetings of the Forum otherwise than for a reason approved by them; or

(c) is in the opinion of the Minister unable or unfit to perform his or her duties as member.

2 Financial provisions

The Minister may pay the members of the Forum such remuneration, and such reimbursement in respect of travel or other expenses properly incurred by them, or in respect of loss of remuneration sustained by them, in the performance of their duties, as the Minister may determine.

3 Staff, facilities and money

The Minister shall provide the Forum with –

(a) such staff;

(b) such accommodation, equipment and other facilities; and

(c) such sums,

as the Minister may reasonably determine are required by the Forum for carrying out their duties in preparing any report on matters referred to them under this Law.

4 Proceedings

(1) The quorum of the Forum and the arrangements relating to their meetings shall be such as the Forum may determine.

(2) The validity of proceedings of the Forum shall not be affected by –

(a) any vacancy among the members, whether occurring by reason of death, resignation or otherwise;

(b) the appointment of a member at any time to fill such a vacancy; or

(c) any defect in the appointment of a member.

SCHEDULE 3

(Article 105)

TRANSITIONAL PROVISIONS AND SAVINGS

1 Disputes reported before commencement

If immediately before this Law comes into force a dispute has been reported to the Industrial Disputes Officer under Article 5 of the Industrial Disputes (Jersey) Law 1956, or an issue has been reported under Article 6 of that Law, and in the event of a dispute the Industrial Disputes Officer has not referred the dispute to the Industrial Disputes Tribunal under Article 11, the Industrial Disputes Officer shall on the coming into force of this Law refer the dispute or issue to JACS who shall deal with it in all respects as though JACS had been requested to offer assistance to the parties to the dispute or issue.

2 Disputes before Industrial Tribunal before commencement

If immediately before this Law comes into force a dispute has been referred under Article 11 of the Industrial Disputes (Jersey) Law 1956 to the Industrial Disputes Tribunal, that Tribunal shall remain constituted and empowered, and the dispute shall be dealt with and any award enforced, in all respects as if this Law had not come into force, and all the expenses incurred in the administration of this paragraph shall be defrayed out of the annual income of the States.[185]

3 Disputes reported to the Industrial Tribunal for advice before commencement

If immediately before this Law comes into force the Industrial Disputes Officer has referred to the Industrial Disputes Tribunal for advice under Article 15 of the Industrial Disputes (Jersey) Law 1956, that Tribunal shall pass the request for advice to JACS who shall deal with the matter in all respects as though JACS had been requested to offer assistance to the parties to the dispute or issue.

4 [186]

5 Action under Subordinate Legislation before commencement

(1) Anything done, or having effect as done, (including the making of subordinate legislation) under or for the purposes of any provision repealed or revoked by this Law shall have effect as if done under or for the purposes of any corresponding provision of this Law.

(2) Sub-paragraph (1) shall not apply to the making of any subordinate legislation to the extent that it is reproduced in this Law.

6 References to be construed as retrospective

Any reference (express or implied) in this Law or any other enactment, or in any instrument or document, to a provision of this Law shall (so far as the context permits) be read as (according to the context) being or including in relation to times, circumstances and purposes before the commencement of this Law a reference to the corresponding provision repealed or revoked by this Law.

7 Continuing validity of references to provisions

Any reference (express or implied) in any enactment, or in any instrument or document, to a provision repealed or revoked by this Law shall (so far as the context permits) be read as (according to the context) being or including in relation to times, circumstances and purposes after the commencement of this Law a reference to the corresponding provision of this Law.

8 Continuity of action taken

(1) Any Order made, or other thing done, by any person under any provision of any enactment that is repealed by this Law that still had force or effect immediately before the repeal of that provision by this Law shall, if there is a provision that gives power to do that thing under this Law, be taken to have been done under the latter provision and by the person who has, under the latter provision, the function of doing that thing.

(2) Sub-paragraph (1) is subject to any express provision, or implication, to the contrary in this Law or in Regulations made under this Law.

9 Transitional provisions, etc., in Regulations

(1) Regulations made under this Law may contain provisions of a saving or transitional nature consequent on the enactment of this Law or on the enactment and registration of any other Law, and (without affecting the generality of the preceding words) on the taking up of functions by the Tribunal.

(2) [187]

(3) Any provision referred to in sub-paragraph (1) may, if the Regulations so provide, come into force on the day on which this Schedule comes into force or on a later day.[188]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Employment (Jersey) Law 2003	L.42/2003	1 July 2005 (R&O.38/2005)	P.55/2003
States of Jersey (Amendments and Construction Provisions No. 8) (Jersey) Regulations 2005	R&O.48/2005	9 December 2005	P.62/2005
Employment of States of Jersey Employees (Consequential, Amendment, Repeal, Transitional and Savings Provisions) (Jersey) Regulations 2005	R&O.155/2005	9 December 2005	P.243/2005
Employment (Amendment) (Jersey) Law 2005	L.39/2005	23 December 2005	P.87/2005
Employment (Amendment No. 2) (Jersey) Law 2007	L.17/2007	29 June 2007	P.134/2006
Employment (Amendment No. 3) (Jersey) Law 2007	L.32/2007	2 November 2007	P.24/2007
Employment Relations (Jersey) Law 2007	L.3/2007	21 January 2008	P.19/2005
Employment (Amendment No. 4) (Jersey) Law 2009	L.12/2009	1 October 2009 (R&O.62/2009)	P.142/2008
Income Tax (Amendment No. 34) (Jersey) Law 2010	L.19/2010	5 November 2010	P.181/2009

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Employment (Amendment No. 5) (Jersey) Law 2010	L.9/2010	1 January 2011 (R&O.107/2010) – Articles 1, 3, 4 and 7, Article 2 (in so far as it inserts the definition "effective date of termination"), Article 5 (in so far as it inserts Articles 60A–60E and 60K–60M) 1 June 2012 (R&O.49/2012) – Article 2 (in so far as it inserts the definition "affected employee"), Article 5 (in so far as it inserts Articles 60F–60J and 60N–60S) Article 6 not in force and repealed by the Employment (Amendment No. 10) (Jersey) Law 2016	P.27/2009
Employment (Amendment No. 6) (Jersey) Law 2012	L.2/2012	21 March 2012 (R&O.49/2012) – Articles 1, 3 and 7 1 June 2012 (R&O.49/2012) – Articles 4, 5 and 6 Article 2 not in force	P.143/2010
Employment (Amendment No. 7) (Jersey) Law 2012	L.3/2012	21 March 2012 (R&O.49/2012) – Articles 1 – 5, 7, 8 and 10 1 June 2012 (R&O.49/2012) – Article 6 Article 9 not in force	P.66/2011

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Civil Partnership (Jersey) Law 2012	L.4/2012	2 April 2012	P.85/2011
Discrimination (Jersey) Law 2013	L.10/2013	1 September 2014 (R&O.28/2014)	P.6/2013
Connétables (Miscellaneous Provisions – Consequential Amendments) (Jersey) Regulations 2014	R&O.81/2014	1 August 2014 (R&O.80/2014)	P.78/2014
Employment (Amendment No. 8) (Jersey) Law 2014	L.43/2014	1 April 2015 – Articles 1, 2, 7, 8, 9, 11 and 12 1 September 2015 – Remainder (R&O.21/2015)	P.109/2014
Employment (Amendment of Law) (Jersey) Regulations 2015	R&O.62/2015	1 September 2015	P.41/2015
Employment (Amendment No. 9) (Jersey) Law 2016	L.2/2016	20 February 2016	P.123/2015
Discrimination (Age) (Jersey) Regulations 2016	R&O.58/2016	1 September 2016 – Regulations 6(1) and 6(3) 1 September 2018 – Regulation 6(2)	P.37/2016 P.20/2018
Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016	L.1/2016	20 September 2016 (R&O.98/2016)	P.87/2015
Employment (Amendment No. 10) (Jersey) Law 2016	L.20/2016	28 October 2016 1 April 2017 – Articles 2–9, 11(b), 12(a) and 14	P.38/2016
Statistics and Census (Jersey) Law 2018	L.8/2018	23 February 2018	P.106/2017
Marriage and Civil Status (Amendment No. 4) (Jersey) Law 2018	L.19/2018	1 July 2018 (R&O.68/2018)	P.91/2017
Employment (Amendment of Law) (No. 2) (Jersey) Regulations 2018*	R&O.30/2018	1 September 2018	P.27/2018
Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 2018	R&O.49/2018	1 October 2018 (R&O.51/2018)	P.48/2018

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Sexual Offences (Consequential Amendments) (Jersey) Regulations 2018	R&O.110/2018	23 November 2018 (R&O.112/2018)	P.106/2018
States of Jersey (Transfer of Responsibilities and Functions) (Health and Social Services to Children and Housing) Order 2019	R&O.100/2019	9 October 2019	
Revenue Administration (Jersey) Law 2019	L.13/2019	1 January 2020 (R&O.136/2019)	P.122/2018
Employment (Amendment No. 11) (Jersey) Law 2020**	L.1/2020	28 June 2020 (R&O.85/2020)	P.100/2019
Social Security (Amendment of Law No. 14) (Jersey) Regulations 2020	R&O.137/2020	24 November 2020	P.124/2020
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	R&O.29/2021	2 March 2021	
Legislation (Jersey) Law 2021	L.8/2021	28 September 2021 (R&O.112/2021)	P.26/2021
Covid-19 (Employment – Minimum Wage) (Jersey) Regulations 2021	R&O.128/2021	15 October 2021	P.85/2021
Employment (Amendment of Law) (No. 3) (Jersey) Regulations 2021	R&O.135/2021	1 January 2022	P.88/2021
Employment (Amendment No. 12) (Jersey) Law 2022	L.17/2022	27 May 2022	P.21/2022
Limited Liability Companies (Consequential Amendments) (Jersey) Regulations 2022	R&O.38/2022	1 September 2022	P.33/2022

◦Projets available at www.statesassembly.gov.je

**Regulation 15 makes the following transitional provision: "The amendments to the Employment (Jersey) Law 2003 made by Regulations 3 and 5 to 14, in so far as they relate to extended periods of maternity, adoption or parental leave, shall have effect only in relation to employees whose expected week of childbirth, or, as the case may be, of adoption begins on or after 2nd September 2018."*

***Article 8 makes the following transitional provision: "The amendments made to the Employment (Jersey) Law 2003 by Articles 4, 5 and 6, in so far as these relate to parental leave, have effect only in relation to employees whose expected week of*

childbirth or, as the case may be, of adoption begins on or after the first Sunday following the date on which this Law comes into force."

Table of Renumbered Provisions

Original	Current
105	Spent, omitted
106	Spent, omitted
107	105
108	106
Schedule 3	Spent, omitted
Schedule 4	Schedule 3

Table of Endnote References

[1] *Article 1(1)*	*amended by L.39/2005, L.3/2007, L.9/2010, L.10/2013, L.1/2020, R&O.38/2022*
[2] *Article 1A*	*inserted by L.3/2007*
[3] *Article 1B*	*inserted by L.3/2007*
[4] *Article 1C*	*inserted by L.3/2007*
[5] *Article 2(4)*	*added by L.3/2012*
[6] *Article 2A*	*inserted by L.3/2007* *law revision powers used to substitute "Minister" for "Committee"*
[7] *Article 2A(1)*	*amended by L.10/2013*
[8] *Article 2B*	*inserted by L.3/2007*
[9] *Article 2B(1)*	*amended by L.10/2013*
[10] *Article 3(2)*	*amended by R&O.38/2022*
[11] *Article 6*	*repealed by R&O.62/2015, inserted by L.17/2022*
[12] *Article 7(1)*	*amended by L.20/2016*
[13] *Article 8(1)*	*amended by L.20/2016*
[14] *Article 8(3)*	*inserted by L.20/2016*
[15] *Article 9(1)*	*amended by L.1/2016*
[16] *Article 9(2)*	*amended by R&O.81/2014*
[17] *Article 10*	*heading amended by R&O.135/2021*
[18] *Article 10(1)*	*substituted by R&O.135/2021*
[19] *Article 10(2)*	*amended by L.39/2005, R&O.135/2021*
[20] *Article 10(2A)*	*inserted by L.43/2014, amended by R&O.135/2021*
[21] *Article 10(2B)*	*inserted by L.43/2014, amended by L.20/2016, R&O.135/2021*
[22] *Article 10(2C)*	*inserted by L.20/2016*
[23] *Article 10(2)(D)*	*inserted by L.20/2016*
[24] *Article 10(2)(E)*	*inserted by L.20/2016*
[25] *Article 10(3)*	*substituted by R&O.135/2021*
[26] *Article 10(3A)*	*inserted by R&O.135/2021*
[27] *Article 10(6)*	*substituted by L.43/2014*
[28] *Article 11(1)*	*amended by R&O.135/2021*
[29] *Part 3A*	*inserted by L.43/2014*
[30] *Article 15A(1)*	*amended by R&O.30/2018*

[31] *Article 15A(2)* *amended by R&O.30/2018*
[32] *Article 15A(3)* *deleted by R&O.30/2018*
[33] *Article 15A(4)* *deleted by R&O.30/2018*
[34] *Article 15A(6)* *inserted by R&O.30/2018*
[35] *Article 15B(5)* *amended by R&O.30/2018*
[36] *Part 3B* *inserted by L.1/2020*
[37] *Article 18A* *inserted by R&O.128/2021, expired on 1 April 2022*
[38] *Article 28(2)* *editorial change, "a employee" deleted, "an employee" inserted instead*
[39] *Article 31(3)* *amended by L.43/2014, L20/2016, L.1/2020*
[40] *Article 31(4)* *added by L.43/2014*
[41] *Article 33(1)* *amended by L.43/2014*
[42] *Article 35(9)* *amended by L.1/2016*
[43] *Article 36* *repealed by L.12/2009*
[44] *Article 51(1)* *substituted by L.32/2007*
[45] *Article 53(1)* *amended by L.20/2016*
[46] *Article 54(1A)* *inserted by L.20/2016*
[47] *Article 54(4)* *inserted by L.20/2016*
[48] *Article 55* *amended by L.1/2016*
[49] *Part 5A* *inserted by L.43/2014, heading amended by L.1/2020*
[50] *Article 55A(1)* *amended by R&O.30/2018, R&O.100/2019, L.1/2020, R&O.29/2021*
[51] *Article 55B* *heading substituted by L.1/2020*
[52] *Article 55B(1)* *substituted by R&O.30/2018, L.1/2020*
[53] *Article 55B(1A)* *inserted by R&O.30/2018, L.1/2020*
[54] *Article 55B(1B)* *inserted by R&O.30/2018, L.1/2020*
[55] *Article 55B(1C)* *inserted by L.1/2020*
[56] *Article 55B(2)* *substituted by R&O.30/2018, amended by L.1/2020*
[57] *Article 55B(2A)* *inserted by L.1/2020*
[58] *Article 55B(3)* *amended by R&O.30/2018*
[59] *Article 55B(4)* *substituted by R&O.30/2018, amended by L.1/2020*
[60] *Article 55B(5)* *inserted by L.1/2020*
[61] *Article 55B(6)* *inserted by L.1/2020*
[62] *Article 55C(1)* *amended by R&O.30/2018, L.1/2020*
[63] *Article 55C(1A)* *inserted by R&O.30/2018, L.1/2020*
[64] *Article 55C(2)* *amended by L.1/2020*
[65] *Article 55C(3)* *deleted by L.1/2020*
[66] *Article 55C(4)* *amended by R&O.30/2018*
[67] *Article 55C(5)* *amended by R&O.30/2018*
[68] *Article 55D* *substituted by L.1/2020*
[69] *Article 55D(2)* *amended by R&O.137/2020*
[70] *Article 55D(7)* *amended by R&O.137/2020*
[71] *Article 55E* *substituted by L.1/2020*
[72] *Article 55E(6)* *amended by R&O.137/2020*
[73] *Article 55F* *substituted by L.1/2020*
[74] *Article 55G* *substituted by L.1/2020*
[75] *Article 55H* *substituted by L.1/2020*
[76] *Article 55I* *substituted by L.1/2020*
[77] *Article 55J* *substituted by L.1/2020*
[78] *Article 55K* *substituted by L.1/2020*
[79] *Article 55L* *substituted by L.1/2020*
[80] *Article 55M* *substituted by L.1/2020*

[81] *Article 55N*	*deleted by L.1/2020*
[82] *Article 55O*	*deleted by L.1/2020*
[83] *Article 55P*	*deleted by L.1/2020*
[84] *Article 55Q*	*deleted by L.1/2020*
[85] *Article 55QA*	*deleted by L.1/2020*
[86] *Article 55R*	*heading substituted by L.1/2020*
[87] *Article 55R(1)*	*amended by L.1/2020*
[88] *Article 55S(4)*	*substituted by R&O.30/2018, amended by L.1/2020*
[89] *Part 5B*	*inserted by L.20/2016*
[90] *Article 56(1)*	*substituted by L.9/2010, amended by L.43/2014*
[91] *Article 56(2)*	*substituted by L.43/2014*
[92] *Article 57(1)*	*substituted by L.20/2016*
[93] *Article 57(2)*	*amended by R&O.62/2015*
[94] *Article 58(7)*	*inserted by L.1/2020*
[95] *Article 58(8)*	*inserted by R&O.38/2022*
[96] *Part 6A*	*inserted by L.9/2010*
[97] *Article 60A(1)*	*numbered by L.20/2016*
[98] *Article 60A(2)*	*added by L.20/2016*
[99] *Article 60B*	*substituted by L.3/2012*
[100] *Article 60C(3)*	*substituted by L.43/2014, amended by L.8/2018*
[101] *Article 60C(4)*	*substituted by L.43/2014*
[102] *Article 60CA*	*inserted by L.3/2012*
[103] *Article 60CA(2)*	*amended by L.43/2014*
[104] *Article 60E(2)*	*amended by L.2/2012*
[105] *Article 60E(4)*	*added by L.2/2012*
[106] *Article 60E(5)*	*added by L.2/2012*
[107] *Article 60F(1)*	*substituted by L.2/2012*
[108] *Article 60F(3)*	*substituted by L.2/2012*
[109] *Article 60F(13)*	*amended by L.3/2012*
[110] *Article 60F(14)*	*added by L.3/2012*
[111] *Article 60H(1)*	*substituted by L.2/2012*
[112] *Article 60H(6)*	*amended by L.2/2012*
[113] *Article 60K(3)*	*amended by L.3/2012*
[114] *Article 60K(4)*	*added by L.3/2012*
[115] *Article 60L(2)*	*amended by L.3/2012*
[116] *Article 60L(3)*	*amended by L.3/2012*
[117] *Article 60N(1)*	*substituted by L.2/2012*
[118] *Article 62(1)*	*amended by L.39/2005*
[119] *Article 63(1)*	*amended by L.9/2010*
[120] *Article 64(2)*	*amended by R&O.58/2016*
[121] *Article 65(1)*	*amended by L.3/2007*
[122] *Article 67*	*substituted by L.43/2014*
[123] *Article 67(1)*	*amended by L.1/2020*
[124] *Article 70A*	*inserted by L.10/2013*
[125] *Article 71(2)*	*amended by L.20/2016, L.1/2020*
[126] *Article 71(3A)*	*inserted by L.20/2016*
[127] *Article 73(2)*	*amended by L.39/2005, L.10/2013*
[128] *Article 73(2A)*	*inserted by L.20/2016*
[129] *Article 73(3)*	*deleted by L.20/2016*
	Article 15 of the Employment (Amendment No. 10) (Jersey) Law 2016 makes the following Transitory saving:

"In relation to an employee employed immediately before the commencement of this Law under such a contract as described in Article 73(3) of the Law, that paragraph shall continue in effect for the duration of the contract, as though it were not repealed by Article 12(b)."

[130] *Article 73(4)* *deleted by R&O.62/2015*
[131] *Article 74* *substituted by R&O.58/2016*
[132] *Article 77* *substituted by L.12/2009*
[133] *Article 77A* *inserted by L.12/2009*
[134] *Article 77B* *inserted by L.12/2009*
[135] *Article 77B(4)* *amended by L.4/2012, L.43/2014, L.19/2018*
[136] *Article 77C* *inserted by L.12/2009*
[137] *Article 77C(3)* *amended by L.4/2012, L.19/2018*
[138] *Article 77D* *inserted by L.12/2009*
[139] *Article 77E* *inserted by L.12/2009*
[140] *Article 77F* *inserted by L.12/2009*
[141] *Article 77G* *inserted by L.12/2009*
[142] *Article 77H* *inserted by L.12/2009*
[143] *Part 7A* *inserted by L.32/2007*
[144] *Article 78A* *inserted by L.32/2007*
[145] *Article 78B* *inserted by L.32/2007*
[146] *Article 79(7)* *substituted by R&O.38/2022*
[147] *Article 81* *substituted by L.10/2013*
[148] *Article 82(3)* *inserted by L.17/2007*
[149] *Article 83* *substituted by L.10/2013*
[150] *Article 84(2)* *amended by L.1/2016*
[151] *Article 84(3)* *amended by R&O.38/2022*
[152] *Article84(5)* *amended by R&O.38/2022*
[153] *Article 85* *substituted by L.20/2016*
[154] *Article 86* *heading substituted by L.3/2007*
[155] *Article 86(4)* *repealed by L.3/2007*
[156] *Article 86(5)* *amended by L.3/2007*
[157] *Article 87* *amended by L.10/2013*
[158] *Article 88* *heading substituted by L.3/2007*
[159] *Article 88(1)* *amended by L.3/2007*
[160] *Article 88(2)* *amended by L.3/2007*
[161] *Article 88(4)* *amended by L.3/2007*
[162] *Article 88(5)* *added by L.39/2005*
[163] *Article 89(1)* *amended by L.39/2005, L.10/2013*
[164] *Article 90(1)* *substituted by L.10/2013*
[165] *Article 90(9)* *repealed by L.39/2005*
[166] *Article 90(10)* *repealed by L.39/2005*
[167] *Article 90(11)* *amended by R&O.49/2018, R&O.110/2018*
[168] *Article 91(1)* *substituted by L.10/2013*
[169] *Article 91(4)* *substituted by L.10/2013*
[170] *Article 91(5)* *added by L.10/2013*
[171] *Article 91(6)* *added by L.10/2013*
[172] *Article 93* *substituted by L.10/2013*
[173] *Article 94* *substituted by L.2/2016*
[174] *Article 96(1)* *amended by R&O.155/2005*
[175] *Article 97(2)* *amended by L.39/2005*
[176] *Article 97(4)* *substituted by L.4/2012*

[177] *Article 98(1)*	*amended by L.19/2010, repealed by L.13/2019*
[178] *Article 101*	*substituted by L.10/2013*
[179] *Article 104(3A)*	*inserted by L.43/2014*
[180] *Article 104(3B)*	*inserted by L.43/2014, deleted by L.1/2020*
[181] *Article 104(6)*	*amended by L.1/2016*
[182] *Article 104(8)*	*deleted by L.8/2021*
[183] *Article 104(9)*	*added by L.10/2013*
[184] *Schedule 1*	*amended by L.43/2014, L20.2016, L.1/2020*
[185] *Schedule 3*	*paragraph 2 amended by L.39/2005*
[186] *Schedule 3*	*paragraph 4 repealed by L.39/3005*
[187] *Schedule 3*	*paragraph 9(2) repealed by L.39/2005*
[188] *Schedule 3*	*paragraph 9(3) amended by L.39/2005*