

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 10) (JERSEY) LAW 201-

Lodged au Greffe on 12th April 2016
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 10) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 10) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy S.J. Pinel of St. Clement**

Minister for Social Security

Dated: 8th April 2016

REPORT

The Draft Employment (Amendment No. 10) (Jersey) Law 201- (the “draft Law”) would amend the Employment (Jersey) Law 2003 (the “Employment Law”). Its primary purpose is to introduce employment protection for Armed Forces Reservists. The opportunity is also taken to propose a number of other unrelated changes to the Employment Law, including the introduction of additional employee compensation awards, and aligning the unfair dismissal qualifying period for short, fixed-term contracts. The proposed amendments and the reasons for them are described in the following paragraphs.

1. Reservists – To provide employment protection for armed forces reservists

The Employment Forum (the “Forum”) consulted in 2013 on whether Armed Forces Reservists (“reservists”) in Jersey should be afforded specific employment protection, given the potentially greater call on their services in the future. The term “reservist” is used to mean an employee who has made a commitment to be a member of the Volunteer Reserve Forces, which consist of civilians from a wide range of industries, whose collective skills are used to reinforce the Regular Armed Forces.

The States of Jersey provides and maintains the Jersey Field Squadron as Jersey’s contribution to defence and as part of an inter-governmental agreement. With 45 members, the Jersey Field Squadron is manned at around half its capacity. Recruitment is underway in line with the “Future Reserves 2020” Strategy¹ with a view to meeting a direction of the Ministry of Defence (the “MOD”) to be fully manned – to 84 Squadron members – by 2018. With the Armed Forces deployed in several conflict zones, the likelihood of a Squadron member being requested to mobilise is higher than it might previously have been.

It is understood that Squadron members generally have supportive employers, and employment-related issues rarely arise; there are no known instances of a reservist in Jersey presenting an unfair dismissal complaint to the Tribunal, and JACS receives few queries on the subject. However, the lack of specific employment protection is a potential barrier to the recruitment of reservists which can impact, not only on the number of reservists, but also on the breadth, professions and skill types of those who undertake reserve service. Reservists are expected to commit to up to 6 months’ active service, plus pre-mobilisation training and de-mobilisation in any 5-year period. The period of active service is a maximum of 12 months in a 3-year period.

The Forum appreciated that any additional employment protection should be as straightforward as possible, and not overly onerous for local employers. Reservists whose employment is not protected may be reluctant to mobilise for fear of losing their job whilst on active service, particularly in the current financial climate. However, the loss of a staff member for up to 12 months may be disruptive, particularly in a small business, and some employers may be reluctant to hold jobs open. The number of reservists in Jersey is currently small, and so potentially only a small number of employers would be affected by the introduction of additional employment protection. However, the MOD strategy requires the number of reservists to increase, with an expectation to recruit around 40–50 additional reservists in Jersey over the next 4–5 years.

¹ Ministry of Defence Green Paper on the “Future Reserves 2020: Delivering the Nation’s Security Together”: www.gov.uk/government/consultations/future-reserves-2020-consultation

The former Minister for Social Security accepted the Forum's recommendations in 2014, and reported to the States that the Employment Law would be amended². As recommended by the Forum, and based on the equivalent UK legislation, the following employment protections are proposed in Articles 6, 10, 12(b), 13(a) and 16 of the draft Law –

- A right to return to the same job or an equivalent job after a period of reserve service
- A requirement for the reservist to notify the employer of their intention to return to work
- Protection of the reservist's period of continuous employment
- Protection against unfair dismissal from Day 1 of employment, where dismissal is related to membership of a reserve force
- Provision for an employer to fairly dismiss an employee who was contracted to temporarily replace a reservist.

2. Compensation – To introduce additional employee compensation awards

The Forum recommended, in December 2015³, that the Employment and Discrimination Tribunal (the “Tribunal”) should have the power to award compensation to employees where their employer fails to comply with the Employment Law in relation to written terms of employment, pay slips and statutory rest-day entitlement. The Minister reported to the States in December 2015 that she accepted the recommendation and that the Employment Law would be amended⁴.

Provision for financial compensation for employees, in addition to the existing remedies, is expected to encourage employers to ensure that they are meeting their obligations under the Employment Law. These compensation awards relate to fundamental, long-standing employment rights that are straightforward to fulfil. Compensation of up to 4 weeks' pay would be available in the Tribunal's discretion, depending on the seriousness of the employer's failure. The new compensation awards are provided in Articles 2, 3, 4, 7 and 8 of the draft Law.

3. Minimum wage – To enable the introduction of a higher minimum wage for older employees

As part of its minimum wage review this year, the Employment Forum will be directed by the Minister to consult on whether a higher hourly rate of minimum wage should be payable to employees over age 25 in Jersey. This is in view of the decision in the UK to introduce a premium minimum wage rate of £7.20 for over-25s from 1st April 2016.

A Proposition from Deputy S.Y. Mézec of St. Helier⁵ debated in January 2016 called for Jersey to match the new UK rate. The Minister would agree that taking a similar approach to the UK – a higher rate for over-25s – could provide us with the opportunity to achieve the more generous minimum wage rate that some States Members would like to see. Jersey's minimum wage must currently be paid to all employees over school-leaving age (usually age 16). If we are to consider introducing

² See the Report to the States Assembly in February 2014 ([R.18/2014](#))

³ More detail is provided in the Forum's recommendation www.gov.je/employmentforum

⁴ [R.134/2015](#)

⁵ [P.150/2015](#)

a higher rate for older employees next year, a primary law change must be made now to allow time for Privy Council assent to be granted before 1st April 2017.

The changes proposed at Articles 5 and 15 of the draft Law set out the primary law change that would be required as an enabling power. The amendment does not in itself require or specify a higher minimum wage for older employees, as that will be subject to the recommendations of the Employment Forum later this year. The debate of this draft Law will provide an opportunity for States Members to demonstrate whether they support a move to higher minimum wage rate for older employees, in principle, before the Forum releases its public consultation on the minimum wage.

In directing the Forum to consult on a higher rate for older employees, the Minister will notify the Forum that she is **not** requesting a recommendation for a ‘youth rate’ that is lower than the current minimum wage. In addition, the Employment Law would not permit different minimum wage rates to be set for different occupations, different employment sectors, different areas of Jersey, businesses of different sizes, or for people of different racial groups or different genders.

4. Redundancy pay – A minor change relating to contractual redundancy pay

The draft Law, in Article 11, provides that any remuneration paid to an employee under their contract of employment goes towards discharging the employer’s liability to pay the statutory redundancy pay entitlement, and *vice versa*. The Employment Law already makes equivalent provision in relation to paid annual leave, ante-natal appointments and compulsory maternity leave, and it is necessary to include the same provision in relation to redundancy pay. Without this provision, an employee could argue that, even though the employer has already paid contractual redundancy pay, they are also entitled to a separate statutory redundancy payment.

5. Replacement employees – Clarifying the position on return to work after family-related leave

Article 71 of the Employment Law currently provides that, where a person has been employed to provide cover for an employee who is absent because of pregnancy or childbirth – and they are notified in writing that their employment will end when the employee returns to work – then the dismissal of the replacement cannot be an unfair dismissal. The current provision does not extend to replacement employees who are covering other types of absence, such as statutory adoption leave.

Following the introduction of family-friendly employment rights in September 2015, Article 12(a) of the draft Law would widen the provision to provide certainty for all parties when an employer is planning for the return to work of an employee following a period of absence or leave relating to pregnancy, childbirth, or adoption. It is important to make this change so that employers and employees know whether it is fair for the replacement employee to be dismissed in such a situation.

6. The ‘two-thirds rule’ – Aligning the unfair dismissal qualifying period for short fixed-term contracts

An employee must have 52 weeks’ service with their employer to qualify for protection against unfair dismissal⁶. The Employment Law makes a different provision for those who are employed under fixed-term contracts for 26 weeks or less. These

⁶ Where the contract starts on or after 1st January 2015: [Employment \(Qualifying Period\) \(Jersey\) Order 2014](#)

employees are protected against unfair dismissal once they have completed at least two-thirds of their fixed-term contract, subject to the employee having at least 13 weeks' continuous service under that contract. This is known as the 'two-thirds rule'. It means that an employee on a fixed-term contract of 26 weeks or less has the right to claim unfair dismissal much sooner than an employee on a longer fixed-term or permanent contract (between 13 and 39 weeks sooner).

The two-thirds rule was created and recommended by the Forum in 2001 as a Jersey-specific rule. At that time, concern had been expressed that staff on short, fixed-term contracts, and seasonal workers, would never acquire protection against unfair dismissal, and that employers might increase their use of fixed-term contracts to prevent employees accruing this right. In its December 2015 recommendation, the Forum concluded that the rule should be removed, as it is not coherent within the context of the current protection against unfair dismissal after 52 weeks' service, the two-thirds rule is no longer effective in relation to its original purpose, and it is very easy for employers to circumvent the rule. There is no equivalent of the two-thirds rule in the UK, Isle of Man or Guernsey. The Minister reported to the States in December 2015 that she accepted the recommendation and that the Employment Law would be amended⁷.

The proposed changes are set out in Articles 13(b) and 17 of the draft Law. Employees working under fixed-term contracts of 52 weeks or less would still qualify for protection against unfair dismissal where the dismissal was for a 'Day 1' unfair reason (e.g. asserting a statutory right). The existing protection for employees working under 'rolling' fixed-term contracts would also continue, in that fixed-term contracts separated by less than 26 weeks are treated as continuous service under the Employment Law. The draft Law protects any existing fixed-term contracts of 26 weeks or less for their duration.

7. Repeals

The opportunity is taken to repeal 3 Articles of the Employment Law which have not been commenced and are no longer required, as follows –

- Article 2 of the [Employment \(Amendment No. 6\) \(Jersey\) Law 2012](#) relates to redundancy pay. It is not required because a second substitution Article 60B was later approved by the States.
- Article 9 of the [Employment \(Amendment No. 7\) \(Jersey\) Law 2012](#) is not required because Article 14 of this draft Law substitutes Article 85 so that the role of Tribunal Secretary can be assigned to officers of the Judicial Greffe.
- Article 6 of the [Employment \(Amendment No. 5\) \(Jersey\) Law 2010](#) relates to the unfair dismissal upper-age limit. It is not required because the Draft Discrimination (Age) (Jersey) Regulations 201- (*see* P.37/2016) would introduce a revised Article 74.

⁷ [R.135/2015](#)

8. Commencement dates

Employment protection for reservists, and the new compensation awards, would come into force on 1st April 2017. It is considered appropriate to give employers notice of these changes to allow them time to make any necessary preparations, such as adjusting procedures and documentation. The Jersey Advisory and Conciliation Service (JACS) will provide guidance on the changes, and will provide a specific guide to help the employers of reservists. The removal of the two-thirds rule would apply from 1st September 2016, and the remaining provisions would come into force immediately after registration in the Royal Court.

Financial and manpower implications

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

Human Rights

No human rights notes are annexed because the Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

This draft Law would make various amendments to the Employment (Jersey) Law 2003 (the “Law”, by virtue of *Article 1*), principally to introduce employment protection for members of the reserve forces, and also to ensure greater consistency of treatment and of availability of remedies throughout the Law.

(In this Note, unless otherwise indicated, references to Articles which are not italicized are to Articles of the Law.)

In Part 2 of the Law, which deals with employment particulars to be given to employees, *Article 2* would amend Article 7 to confer power on the Tribunal to determine what particulars should have been given by a statement under that Part, and whether compensation for lack of such particulars is due to the employee. *Article 3* consequentially amends Article 8 to provide that the amount of compensation awarded may be up to 4 weeks’ pay, and that such an award is to be made separately to any fine imposed in relation to an offence of failing to comply with the requirements of Part 2.

Similar amendments would be made to the provisions of Part 5 of the Law dealing with pay statements. *Article 7* would amend Article 53 to confer power on the Tribunal to determine what particulars should have been given by a pay statement and whether compensation for lack of such particulars is due to the employee, and *Article 8* would consequentially amend Article 54 as to the amount of such compensation.

Article 4 would further amend Article 10 which creates the entitlement to a weekly rest period, to confer a right for an employee whose entitlement to such a period has been breached to present a complaint to the Tribunal and, if the Tribunal finds the complaint well-founded, the Tribunal may order the award of compensation of an amount not exceeding 4 weeks’ pay.

Article 5 would make a minor consequential amendment to Article 16 (entitlement to minimum wage) in relation to the amendment made by *Article 15* to Article 104. The combined effect of these amendments is that different hourly rates may be prescribed in respect of different classes of person who qualify for the minimum wage, but subject to the particular limitations set out in Article 16(7) (i.e. different rates may not be set by reference to different areas of Jersey, sectors of employment, racial groups or genders, etc.).

Article 6 would make an amendment to Article 31 which is consequential upon the introduction, by *Article 10*, of a new Part 5B to confer the right to return to work on Jersey employees who are members of reserve forces (as defined in new Article 55U, that is, 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) and also to protect such people (“reservists”) from unfair dismissal by reason of their service. New Article 55V requires reservists intending to return to work to give notice of their intention in accordance with the provisions of that Article. If they do so, new Article 55W creates the right to return to a job upon the same terms and conditions, and Article 55Z provides for the continuity of the employment. New Article 55X entitles reservists to bring complaints to the Tribunal for breach of the provisions of the new Part 5B and new Article 55Y makes provision for the remedies which the Tribunal may award. *Articles 9, 12(b), 13(a) and 16* would make related amendments to Articles 57, 71, 73 and Schedule 1 respectively.

Article 11 would amend Article 60A to provide that an employer may set off, against a statutory liability to make payment in respect of redundancy, any remuneration paid in respect of redundancy under contractual terms.

Article 12(a) would amend Article 71 so that dismissal of staff covering for those temporarily absent on maternity leave, parental leave or adoption leave is not unfair.

Article 13(b) would remove the “two-thirds rule” applying under Article 73(3) in relation to fixed term contracts for 26 weeks or less, but *Article 17* would preserve the current position applicable to staff employed under such contracts at the date of commencement of the Law, until their contracts expire.

Article 14 would substitute Article 85 to provide that the Judicial Greffier shall act as Secretary of the Tribunal and may delegate that role to one or more officers.

Article 18 would repeal certain provisions in previous amending Laws which have not been brought into force and are now unnecessary.

Article 19 would provide for the citation of the Law, and for its commencement.



Jersey

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Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 10) (JERSEY) LAW 201-

A LAW to amend further the Employment (Jersey) Law 2003

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “Law” means the Employment (Jersey) Law 2003¹.

2 Article 7 amended

In Article 7(1) of the Law, for the words from “determine” to the end there shall be substituted the following –

“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.”.

3 Article 8 amended

In Article 8 of the Law –

- (a) in paragraph (1) for the words from “or 4,” to the end there shall be substituted the following –

“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.";
- (b) after paragraph (2) there shall be added the following paragraph –
- “(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.”.

4 Article 10 amended

In Article 10 of the Law –

- (a) in paragraph (2B) –
 - (i) for the words “has taken a rest period which has been interrupted,” there shall be substituted the following sub-paragraphs –
 - “_
 - (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) or (2); or
 - (b) has taken a rest period which has not been an uninterrupted rest period within the meaning given by paragraph (2A),”
 - (ii) for the words “rest day” in each place in which they occur there shall be substituted the words “rest period”, and
 - (iii) for the words “was interrupted” there shall be substituted the words “was due to be taken or, as the case may be, was interrupted”;
- (b) after paragraph (2B) there shall be inserted the following paragraphs –
 - “(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.
 - (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.
 - (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.”.

5 Article 16 amended

In Article 16(7) of the Law, after the word “paragraph” there shall be inserted the words “(3) or”.

6 Article 31 amended

In Article 31(3)(c) of the Law –

- (a) for the words “or 5A” there shall be substituted the words “, 5A or 5B”;
- (b) at the end of clause (v) the word “or” shall be deleted; and
- (c) after clause (vi) there shall be added –

“or

(vii) service as a reservist, as defined by Part 5B.”.

7 Article 53 amended

In Article 53(1) of the Law, for the words from “determine” to the end there shall be substituted the following –

“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.”.

8 Article 54 amended

In Article 54 of the Law –

- (a) after paragraph (1) there shall be substituted the following paragraph –

“(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.”; and

- (b) after paragraph (3) there shall be added the following paragraph –

“(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.”.

9 Article 57 amended

In Article 57 of the Law, for paragraph (1) there shall be substituted the following paragraph –

- “(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.”.

10 Part 5B inserted

After Part 5A of the Law there shall be inserted the following Part –

**“PART 5B
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.”.

11 Article 60A amended

In Article 60A of the Law, the existing text shall be numbered as paragraph (1) and after it there shall be added the following paragraph –

- “(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.”.

12 Article 71 amended

In Article 71 of the Law –

- (a) in paragraph (2)(a) for the words “pregnancy or childbirth” there shall be substituted the words “pregnancy, childbirth or adoption, including but not limited to absence because of maternity leave (whether compulsory or ordinary, as defined in Article 55A(1)), adoption leave under Chapter 4 of Part 5A, or parental leave under Chapter 5 of that Part”; and
- (b) after paragraph (3) of the Law there shall be inserted the following paragraph –

“(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.”.

13 Article 73 amended

In Article 73 of the Law –

- (a) after paragraph (2) there shall be inserted the following paragraph –
- “(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).”; and
- (b) paragraph (3) shall be deleted.

14 Article 85 substituted

For Article 85 of the Law there shall be substituted the following Article –

“85 Secretary of the Tribunal

- (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.”.

15 Article 104 amended

In Article 104 of the Law, paragraph (5) shall be deleted.

16 Schedule 1 amended

In paragraph 5 of Schedule 1 to the Law, after sub-paragraph (e) there shall be inserted the following sub-paragraph –

“(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;”.

17 Transitory saving for Article 73(3)

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 13(b).

18 Repeals

- (1) In the Employment (Amendment No. 5) (Jersey) Law 2010², Article 6 is repealed.
- (2) In the Employment (Amendment No. 6) (Jersey) Law 2012³, Article 2 is repealed.
- (3) In the Employment (Amendment No. 7) (Jersey) Law 2012⁴, Article 9 is repealed.

19 Citation and commencement

This Law may be cited as the Employment (Amendment No. 10) (Jersey) Law 201- and shall come into force 7 days after it is registered, except that –

- (a) if registration takes place before 1st September 2016, Articles 13(b) and 17 shall not come into force until that date; and
- (b) Articles 2, 3, 4, 6, 7, 8, 9, 10, 12(b), 13(a) and 16 shall come into force on 1st April 2017.

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- ¹ *chapter 05.255*
 - ² *L.9/2010*
 - ³ *L.2/2012*
 - ⁴ *L.3/2012*