

# PROJET DE LOI

ENTITLED

## **The Employment Protection (Guernsey) Law, 1998 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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No. IX of 1998 (Ordres en Conseil Vol. XXXVIII, p. 239); as amended by the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (No. XVIII of 2001, Ordres en Conseil Vol. XLI, p. 605); the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001 (No. VIII of 2002, Ordres en Conseil Vol. XLII(1), p. 229); the Employment Protection (Guernsey) (Amendment) Law, 2005 (No. I of 2006); the Minimum Wage (Guernsey) Law, 2009 (No. I of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (No. XXXI of 2005, Recueil d'Ordonnances Tome XXX, p. 627); the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 (No. III of 2016); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (No. VIII of 2004, Ordres en Conseil Vol. XLIV(2), p. 1); the Royal Court (Reform) (Guernsey) Law, 2008 (No. XXII of 2008); the Minimum Wage (Guernsey) Law, 2009 (*supra*); the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 (No. XXX of 2005, Recueil d'Ordonnances Tome XXIX, p. 606); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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## **The Employment Protection (Guernsey) Law, 1998**

### ARRANGEMENT OF SECTIONS

#### PART I

#### MINIMUM PERIODS OF NOTICE & STATEMENT OF REASONS FOR DISMISSAL

1. Rights of employer and employee to minimum period of notice.
2. Written statement of reasons for dismissal.

#### PART II

#### UNFAIR DISMISSAL

3. Right not to be unfairly dismissed.
4. Employment to which this Part of this Law applies.
5. Meaning of "dismiss" and "dismissal".
6. General provisions relating to fairness of dismissal.
7. Meaning of "capability" and "qualifications".
8. Dismissal relating to trade union membership or activities.
9. Dismissal on ground of pregnancy, childbirth or adoption, or maternity leave etc.
- 9A. Dismissal on ground of sex or marital status.
10. Dismissal of replacement.
11. Dismissal in health and safety cases.
12. Dismissal on grounds of assertion of statutory right.
13. Dismissal on ground of redundancy for inadmissible reasons.
14. Pressure on employer to dismiss unfairly.
15. Qualifying period.

#### PART IIA

#### PROTECTION FOR SUNDAY SHOP WORKERS

- 15A. Protected shop workers.
- 15B. Contractual requirements relating to Sunday work.
- 15C. Contracts with guaranteed hours.
- 15D. Reduction of pay, etc.
- 15E. Notice of objection to Sunday working.

- 15F. Opted-out shop workers.
- 15G. Explanatory statement.
- 15H. Contractual requirements relating to Sunday work.
- 15I. Unfair dismissal of shop workers who refuse Sunday work.
- 15J. Detriments to shop workers who refuse Sunday work.
- 15K. Remedies.
- 15L. Interpretation of Part IIA.

### PART III THE COMPLAINTS PROCEDURE & THE TRIBUNAL

- 16. Making of complaints to Tribunal.
- 17. Time limit for presenting complaints.
- 18. Form and manner of presenting complaints.
- 19. Power to refuse to hear complaints.
- 20. Conciliation services to be offered.
- 20A. Tribunal may remit minimum wage complaints for hearing by a three member Tribunal.
- 21. Compensation for unfair dismissal.
- 22. Amount of award.
- 23. Reduction of award in certain cases.
- 24. Remedies for failure to give written statement of reasons for dismissal.
- 24A. Determination of minimum wage complaints.
- 25. Appeals from Tribunal to Royal Court.
- 26. Reference of points of law to Royal Court.
- 27. Appeals from Royal Court to Court of Appeal.
- 28. Interpretation of awards.
- 29. Awards to be recoverable as preferred debts.
- 30. Awards to be payable in addition to other remedies.
- 30A. Restrictions on contracting out, and compromise agreements.
- 30B. Tribunal may join complaints.
- 30C. Minimum wage decisions to be binding.

### PART IV GENERAL PROVISIONS

- 31. Codes of practice.
- 32. Delegation of powers.
- 33. Proof of documents.
- 34. Interpretation.
- 34A. Power to amend Law by Ordinance.
- 35. General provisions as to subordinate legislation.
- 36. Amendment of Industrial Disputes Law and Preferred Debts Law.
- 37. Service of documents.
- 38. Records of proceedings.
- 39. Committee to co-operate with Tribunal.

- 40. Citation.
- 41. Commencement.

SCHEDULE Continuous Employment.

# PROJET DE LOI

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## **The Employment Protection (Guernsey) Law, 1998**

**THE STATES**, in pursuance of their Resolution of the 1<sup>st</sup> day of June, 1995<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART I

#### MINIMUM PERIODS OF NOTICE & STATEMENT OF REASONS FOR DISMISSAL

##### **Rights of employer and employee to minimum period of notice.**

**1.** (1) The notice required to be given by an employer to an employee, or by an employee to an employer, to terminate the contract of employment of the employee shall be –

- (a) not less than one week's notice, where the employee has been continuously employed for a period of one month or more but less than two years,
- (b) not less than two weeks' notice, where the employee has been continuously employed for a period of two years or more but less than five years,

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<sup>a</sup> Article XIV of Billet d'État No. XI of 1995.

- (c) not less than four weeks' notice, where the employee has been continuously employed for a period of five years or more.

(2) An employee's contract of employment, including any provision therein for shorter notice, shall have effect subject to subsection (1), but this section shall not be taken as preventing either party from –

- (a) waiving his right to notice on any occasion, or
- (b) accepting a payment in lieu of notice.

(3) Subsections (1) and (2) do not apply to a contract –

- (a) made in contemplation of the performance of a specific task which is not expected to last for more than three months, or
- (b) for a fixed term of three months or less,

unless in either case the employee has been continuously employed for a period of more than three months.

(4) This section shall not affect the right of either party to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him so to treat it before the commencement of this Law.

(5) A failure by an employer or employee to give the notice required by this section shall (subject to the provisions of paragraphs (a) and (b) of subsection (2), and without prejudice to any other remedy of the parties) be deemed to be a breach of contract and actionable as such.

- (6) This section does not apply in relation to –
- (a) employment during any period when the employee is engaged in work wholly or mainly outside Guernsey unless –
    - (i) the employee ordinarily works in Guernsey and the work outside Guernsey is for the same employer, or
    - (ii) the law which governs his contract of employment is the law of Guernsey,
  - (b) a person employed as a master of or seaman on a seagoing ship registered in the Bailiwick of Guernsey under the Merchant Shipping Act 1894<sup>b</sup> having a gross registered tonnage of eighty tons or more, including a person ordinarily employed as a seaman who is employed in or about such a ship in port by the owner or charterer of the ship to do work of a kind ordinarily done by a seaman on such a ship when it is in port, or
  - (c) a person employed as a skipper of or seaman on a fishing boat for the time being registered in the Bailiwick of Guernsey under Part IV of the Merchant Shipping Act 1894.

- (7) Notwithstanding the foregoing provisions of this section, a

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<sup>b</sup> An Act of Parliament (1894 c. 60).

liquidator or provisional liquidator appointed by the Court under section 99 or 97 of the Companies (Guernsey) Law, 1994<sup>c</sup> on the making of an order, or on the making of or pursuant to an application for an order, for the compulsory winding up of a company may treat any contract of employment to which the company is a party as terminable without any period of notice which would otherwise be required to be given by this section.

(8) The provisions of this section are without prejudice to any provision in a contract of employment requiring longer notice to be given.

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## NOTES

*The following cases have referred to this Law:*

*Warden v. Fermain Legal Services Limited* (2004) (Unreported, Royal Court, 31st December) (Guernsey Judgment No. 66/2004); 2003-04 GLR Note 35;

*Credit Suisse (Guernsey) Limited v. Carré* 2005–06 GLR 364;

*Da Mata v George t/as Private Home Care* (2008) (Unreported, Royal Court, 7th July) (Guernsey Judgment No. 22/2008);

*Good v. Credit Suisse (Guernsey) Limited* 2009–10 GLR 183;

*Burford v. Flybe Ltd* (2009) (Unreported, Royal Court, 23rd June) (Guernsey Judgment No. 29/2009); 2009-10 GLR Note 10;

*A J Troalic & Sons v. Kinsey* (2010) (Unreported, Royal Court, 9th April) (Guernsey Judgment No. 19/2010); 2007-08 GLR Note 19;

*Cams Limited v. Cluer* (2012) (Unreported, Royal Court, 20th February) (Guernsey Judgment No. 6/2012);

*Cotterill v. Cherry (T/A Caring Companions Nursing Agency)* (2014) (Unreported, Royal Court, 28th March) (Guernsey Judgment No. 12/2014);

*Harlequin Hire Cars v. Dent* (2014) (Unreported, Royal Court, 13th June) (Guernsey Judgment No. 26/2014);

*Lange v. Waters* (2016) (Unreported, Royal Court, 10th February) (Guernsey Judgment No. 4/20160;

*Cotterill v. The States of Guernsey* (2017) (Unreported, Royal Court, 19th December) (Guernsey Judgment No. 58/2017);

*Sahara City Co. Limited v. Chiverton* [2019]GRC070 (Unreported, Royal Court, 18th December);

*Sahara City Co. Limited v. Chiverton* [2021]GRC002 (Unreported, Royal Court, 6th January).

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<sup>c</sup> Order in Council No. XXXIII of 1994; amended by No. XIV of 1996.



*The following ruling has referred to this Law:*

*Convenor of the Employment and Discrimination Panel & the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 (2014) (Unreported, Royal Court, 7th February) (Guernsey Judgment No. 8/2014).*

*In accordance with the provisions of the Royal Court (Reform) (Guernsey) Law, 2008, section 19(3), the provisions of Part I of this Law shall not apply to the offices of Sheriff and Sergeant, with effect from 29th October, 2008.*

*In accordance with the provisions of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296(3), Schedule 11, paragraph 1, the reference in paragraph (b) of subsection (6) of this section to "a seagoing ship registered in the Bailiwick of Guernsey under the Merchant Shipping Act 1894" shall be construed, unless the context otherwise requires, as, or as including, a reference to registration under Part II of the 2002 Law.*

*The Merchant Shipping Act 1894, in so far as it applies to the Bailiwick of Guernsey, is prospectively repealed by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296, Schedule 10, Part I, save for –*

- (i) Part I, sections 371, 373, 374, 487–491, 503(2), 724–727, 745 of, and the First, Second and Third Schedules to, the Act, repealed by the aforesaid section 296, Schedule 10, Part I, as brought into force by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009, section 2(a), with effect from 1st February, 2009 and subject to, first, the savings and transitional provisions in section 296(3) of, and Schedule 11 to, the 2002 Law and, second, the savings provisions in section 4 of the 2009 Ordinance;*
- (ii) Part II of the Act (excluding sections 251–258), repealed by the aforesaid section 296, Schedule 10, Part I, as brought into force by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2013, section 2(a), with effect from 4th February, 2013 and subject to, first, the savings and transitional provisions in section 296(3) of, and Schedule 11 to, the 2002 Law and, second, the savings in section 5 of the 2013 Ordinance; and*
- (iii) Part VIII of the Act, repealed by the aforesaid section 296, Schedule 10, Part I, as brought into force by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2012, section 2(a), with effect from 1st October, 2012 and subject to, first, the savings and transitional provisions in section 296(3) of, and Schedule 11 to, the 2002 Law and, second, the savings in section 3 of the 2012 Ordinance.*

*The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.*

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**Written statement of reasons for dismissal.**

2. (1) An employee shall be entitled –
- (a) if he is given by his employer notice of termination of his contract of employment,
  - (b) if his contract of employment is terminated by his employer without notice, or
  - (c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract,

to be provided by his employer, on request, within seven days of that request, with a written statement giving particulars of the reasons for his dismissal.

(2) An employee shall not be entitled to a written statement under subsection (1) unless on the effective date of termination he has been, or will have been, continuously employed for a period of not less than [one year (or such other period as the States may by Ordinance specify)] ending with that date.

(3) An employee shall be entitled (without making any request and irrespective of whether or not she has been continuously employed for any period) to be provided by her employer with a written statement giving particulars of the

reasons for her dismissal if she is dismissed –

- (a) at any time while she is pregnant, or
- (b) after childbirth in circumstances in which any maternity leave period to which she may be entitled ends by reason of the dismissal.

(4) A written statement provided under this section shall be admissible in evidence in any proceedings.

(5) A complaint may be presented by an employee [to the Employment and Discrimination Tribunal ("**the Tribunal**")] under [section 16] on the ground that the employer unreasonably failed to provide a written statement under this section or that the particulars of reasons given in purported compliance with this section are inadequate or untrue; and the provisions of Part III of this Law shall apply accordingly.

(6) This section does not apply to employment where under his contract of employment the employee ordinarily works outside Guernsey.

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## NOTES

*In section 2,*

*the words in square brackets in subsection (2) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 4, with effect from 1st March, 2006, subject to the savings in section 24 of the 2005 Law;*

*the words in the first and second pairs of square brackets in subsection (5) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, respectively section 5(a) and section 5(b), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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PART II  
UNFAIR DISMISSAL

**Right not to be unfairly dismissed.**

3. In every employment to which this Part of this Law applies every employee shall, subject to the provisions of section 15 (which specifies the qualifying period), have the right not to be unfairly dismissed by his employer.

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**NOTE**

*In accordance with the provisions of the Royal Court (Reform) (Guernsey) Law, 2008, section 19(3), the provisions of Part II of this Law shall not apply to the offices of Sheriff and Sergeant, with effect from 29th October, 2008.*

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**Employment to which this Part of this Law applies.**

4. (1) This Part of this Law applies to every employment other than –
- (a) employment where under his contract of employment the employee ordinarily works outside Guernsey,
  - (b) employment under a contract for a fixed term of [one year (or such other period as the States may by Ordinance specify)] or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing (whether the agreement is contained in the contract itself or in a separate agreement) to exclude any claim in respect of rights under this Part of this Law in relation to that contract [(provided always that any agreement by an employee to exclude any such

claim arising pursuant to section 15I(1) or (3) shall be void)], or

- (c) employment as the master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

(2) For the purposes of subsection (1)(a) a person employed to work on board a ship registered in the Bailiwick of Guernsey under the Merchant Shipping Act 1894 shall, unless –

- (a) the employment is wholly outside Guernsey, or
- (b) he is not ordinarily resident in Guernsey,

be regarded as a person who under his contract of employment ordinarily works in Guernsey.

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## NOTES

*In section 4,*

*the words in the first pair of square brackets in paragraph (b) of subsection (1) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 6, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*the words in the second pair of square brackets in paragraph (b) of subsection (1) were inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 2(2), with effect from 1st July, 2002.*

*In accordance with the provisions of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296(3), Schedule 11, paragraph 1, the reference in subsection (2) of this section to "a ship registered in the*

*Bailiwick of Guernsey under the Merchant Shipping Act 1894" shall be construed, unless the context otherwise requires, as, or as including, a reference to registration under Part II of the 2002 Law.*

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**Meaning of "dismiss" and "dismissal".**

5. (1) In this Law "**dismiss**" and "**dismissal**" shall be construed in accordance with the following provisions of this section.

(2) Subject to subsection (3), an employee shall be treated as dismissed by his employer if, but only if –

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice,
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
- (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

(3) Where an employer gives notice to an employee to terminate his contract of employment and, 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, the employee shall for the purposes of this Part of this Law be taken to be dismissed by his employer, and the reason for the dismissal shall be taken to be the reasons for which the employer's notice is given.

(4) In this Law "**the effective date of termination**" –

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that 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 contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

(5) Where the contract of employment is terminated by the employer and the notice required by section 1 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 (as defined by subsection (4)) then, for the purposes of section 15(1), the later date shall be treated as the effective date of termination in relation to the dismissal.

(6) In subsection (5), "**material date**" means the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer.

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**NOTE**

*The following case has referred to section 5:*

*Lange v. Waters* (2016) (Unreported, Royal Court, 10th February)  
(Guernsey Judgment No. 4/2016).

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**General provisions relating to fairness of dismissal.**

6. (1) In determining for the purposes of this Part of this Law whether the dismissal of an employee was fair or unfair, it shall be for the employer to show –

- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
- (b) that it was a reason falling within subsection (2).

(2) For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which –

- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) related to the conduct of the employee,
- (c) was that the employee was redundant,
- (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under the law of Guernsey, or
- (e) was some other substantial reason of a kind such as to



justify the dismissal of an employee holding the position which that employee held.

(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14 [and 15I], the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall 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 that question shall be determined in accordance with equity and the substantial merits of the case.

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#### NOTES

*In section 6, the words in square brackets in subsection (3) were inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 2(3), with effect from 1st July, 2002.*

*The following case has referred to section 6:*

*Burford v. Flybe Ltd* (2009) (Unreported, Royal Court, 23rd June)  
(Guernsey Judgment No 29/2009); 2009-10 GLR Note 10.

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#### **Meaning of "capability" and "qualifications".**

7. In section 6, in relation to an employee –
- (a) **"capability"** means capability assessed by reference to skill, aptitude, health or any other physical or mental quality,
  - (b) **"qualifications"** means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

**Dismissal relating to trade union membership or activities.**

8. (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part of this Law as having been 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 an independent trade union,
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, 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.

(2) In subsection (1)(b) "**an appropriate time**" means –

- (a) a time outside the employee's working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him 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 contract of employment, he is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal of an employee was –

- (a) his refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or
- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within subsection (1)(c).

(4) In this section references to being, becoming or ceasing to remain a member of a trade union shall include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or one of a number of particular branches or sections of that union, and references to taking part in the activities of a trade union shall be similarly construed.

**[Dismissal on ground of pregnancy, childbirth or adoption, or maternity leave etc.]**

**9.** (1) Subject to the provisions of this section, the dismissal of an employee by an employer shall be regarded for the purposes of this Part of the Law as having been unfair if –

- (a) the reason for it (or, if more than one, the principal reason) is of a kind specified in subsection (4), or
- (b) the reason for it (or, if more than one, the principal reason) is that the employee is redundant, and section 9 of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 ("**the Maternity Leave Ordinance**") has not been complied with.

(2) Subsection (1)(b) does not apply in relation to an employee if

—

- (a) it is not reasonably practicable for a reason other than redundancy for the employer or his successor to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances,
- (b) an associated employer offers her a job of that kind, and
- (c) she accepts or unreasonably refuses that offer.

(3) The dismissal of an employee by an employer shall also be regarded for the purposes of this Part of the Law as having been unfair 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 a reason of a kind specified in subsection (4).

(4) The reasons referred to in subsections (1)(a) and (3)(c) are –

- (a) that the employee was pregnant,
- (b) any other reason associated with the employee's pregnancy except those reasons set out in subsection (5),
- (c) that the employee has given birth to a living child, or has given birth to a child whether living or dead after 24 weeks of pregnancy,
- (d) that the employee has adopted a child within the meaning of section 12 of the Maternity Leave Ordinance, or
- (e) that the employee took or sought to take –
  - (i) maternity leave, adoption leave, maternity support leave or adoption support leave within the meaning of, and when entitled to do so under, the Maternity Leave Ordinance,

- (ii) time off to attend an appointment to receive ante-natal care within the meaning of, and when entitled to do so under, section 14 of the Maternity Leave Ordinance.
- (5) The reasons referred to in subsection (4)(b) are –
  - (a) that at the effective date of termination the employee was or would have become, because of her pregnancy, incapable of adequately doing the work which she was employed to do,
  - (b) that, because of her pregnancy, she could not do or would not have been able to continue after that date to do that work without contravention (either by her or employer) of a duty or restriction imposed by or under the law of Guernsey.]

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**NOTE**

*Section 9 was substituted by the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, section 20, Schedule 2, paragraph 2, with effect from 1st April, 2016.*

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**[Dismissal on ground of sex or marital status.]**

**9A.** The dismissal of an employee by an employer shall be regarded for the purposes of this Part of this Law as having been unfair if the dismissal constituted an act of discrimination against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.]

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**NOTE**

*Section 9A was inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 70(1), with effect from 1st March, 2006.*

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**Dismissal of replacement.**

**10.** (1) Where an employer –

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth, and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee,

then, for the purposes of section 6(1)(b), but without prejudice to the application of section 6(3), the dismissal shall be regarded as having been for a reason falling within section 6(2)(e).

(2) Where an employer –

- (a) on engaging an employee informs the employee in writing that his employment will be terminated at the end of a suspension on medical grounds of another employee, and
- (b) dismisses the first-mentioned employee in order to make it possible to allow the resumption of work by the other employee,

then, for the purposes of section 6(1)(b), but without prejudice to the application of

section 6(3), the dismissal shall be regarded as having been for a reason falling within section 6(2)(e).

(3) For the purposes of subsection (2)(a), a **"suspension on medical grounds"** occurs when an employee is suspended from work by his employer on medical grounds in consequence of –

- (a) any requirement imposed by or under any of the relevant statutory provisions within the meaning of section 35 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987<sup>d</sup>, or
- (b) any recommendation in any provision of a code of practice issued or approved under section 13 of that Ordinance.

(4) For the purposes of this section an employee shall be regarded as suspended from work if, and so long as, he continues to be employed by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.

**Dismissal in health and safety cases.**

**11.** (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part of this Law as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or

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<sup>d</sup> Recueil d'Ordonnances Tome XXIV, p. 162.



proposed to carry out, any such activities,

- (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee –

- (i) in accordance with arrangements established under or by virtue of any enactment or other statutory provision, or

- (ii) by reason of being acknowledged as such by the employer,

performed, or proposed to perform, any functions as such a representative or a member of such a committee,

- (c) being an employee at a place where –

- (i) there was no such representative or safety committee, or

- (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

- (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or
- (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e), the question of whether any steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.

**Dismissal on grounds of assertion of statutory right.**

**12.** (1) The dismissal of an employee by an employer shall be regarded for the purpose of this Part of this Law as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) For the purposes of this section a **"relevant statutory right"** is any right conferred by or under –

- (a) this Law,
- (b) the Conditions of Employment (Guernsey) Law, 1985<sup>e</sup>,  
or
- (c) the Industrial Disputes and Conditions of Employment  
(Guernsey) Law, 1993<sup>f</sup>, [ or
- (d) the Sex Discrimination (Employment) (Guernsey)  
Ordinance, 2005][, or]

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<sup>e</sup> Ordres en Conseil Vol. XXIX, p. 42; No. I of 1992 and No. XXIII of 1994.

<sup>f</sup> Order in Council No. I of 1993.

[(e) the Minimum Wage (Guernsey) Law, 2009 ("**the 2009 Law**")][, or]

[(f) the Maternity Leave Ordinance.]

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## NOTES

*In section 12,*

*paragraph (d) of subsection (4), and the word immediately after paragraph (c) thereof, were inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 70(2), with effect from 1st March, 2006;*

*paragraph (e) of subsection (4) was inserted, and the word and punctuation immediately after paragraph (d) thereof were substituted, by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 1, with effect from 1st October, 2010;*

*paragraph (f) of subsection (4) was inserted, and the word and punctuation immediately after paragraph (e) thereof were substituted, by the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, section 20, Schedule 2, paragraph 3, with effect from 1st April, 2016.*

*The following case has referred to section 12:*

*Lange v. Waters* (2016) (Unreported, Royal Court, 10th February) (Guernsey Judgment No. 4/2016).

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### **Dismissal on ground of redundancy for inadmissible reasons.**

**13.** (1) Where the reason or principal reason for the dismissal of an employee was that the employee 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) for which the employee was selected for dismissal was an inadmissible reason,

then, for the purposes of this Part of this Law, the dismissal shall be regarded as unfair.

(2) For the purposes of this section "**inadmissible**", in relation to a reason, means that it is one of those specified in section 8(1), 9, 11(1) (read with section 11(2) and (3)) or 12(1) (read with section 12(2) and (3)) [or in section 6(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (read with section 6(2) of that Law)] [or in section 15I(1) (as read with section 15I(2)) or 15I(3) of this Law].

[ (2A) For the purposes of subsection (1)(b) the employee shall, in a redundancy case, be deemed to have been selected for dismissal for an inadmissible reason if his selection for dismissal constituted an act of discrimination against him prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.]

(3) For the purposes of this Law a "**redundancy case**" means a case where the reason or principal reason for dismissal was that the employee was redundant and the equal application of the circumstances to non-dismissed employees described in subsection (1)(a) is also shown.

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## NOTES

*In section 13,*

*the words in the first pair of square brackets in subsection (2) were inserted by the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001, section 12, with effect from 1st October, 2001;*

*the words in the second pair of square brackets in subsection (2) were inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 2(4), with effect from 1st July, 2002;*

*subsection (2A) was inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 70(3), with effect from 1st March, 2006.*

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### **Pressure on employer to dismiss unfairly.**

**14.** In determining, for the purposes of this Part of this Law, any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 6(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him –

- (a) 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
- (b) any such question shall be determined as if no such pressure had been exercised.

### **Qualifying period.**

**15.** (1) Subject to subsection (2), section 3 does not apply to the dismissal of an employee from any employment unless the employee was continuously employed for a period of not less than [one year (or such other period as the States may by Ordinance specify)] ending with the effective date of termination.

[ (2) Subsection (1) does not apply to the dismissal of an employee if it is shown that –

- (a) the reason or (if more than one) the principal reason for

the dismissal or, in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 8(1), section 9, section 11(1) (read with section 11(2) and (3)), section 12(1) (read with section 12(2) and (3)), section 15I(1) (read with section 15I(2)) or section 15I(3), or

- (b) the dismissal constituted an act of discrimination against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.]

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## NOTES

*In section 15,*

*the words in square brackets in subsection (1) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 7, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*subsection (2) was substituted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 70(4), with effect from 1st March, 2006.<sup>1</sup>*

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## [PART IIA

### PROTECTION FOR SUNDAY SHOP WORKERS

#### **Protected shop workers.**

**15A.** (1) Subject to subsection (4), a shop worker is to be regarded as "**protected**" for the purposes of any provision of this Part of this Law if (and only if) subsection (2) or (3) applies to him.

- (2) This subsection applies to a shop worker if –

- (a) on the day before the relevant date he was employed as a shop worker but not to work only on Sunday,
- (b) he has been continuously employed during the period beginning with that day and ending with the day which, in relation to the provision concerned, is the appropriate date, and
- (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(3) This subsection applies to a shop worker whose contract of employment is such that under it he –

- (a) is not, and may not be, required to work on Sunday, and
- (b) could not be so required even if the provisions of this Part of this Law were disregarded.

(4) A shop worker is not a protected shop worker if –

- (a) he has given his employer an opting-in notice on or after the relevant date, and
- (b) after giving the notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.



(5) In this Part of this Law an "**opting-in notice**", in relation to a shop worker, means written notice, signed and dated by the shop worker, in which he expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

(6) In this Part of this Law "**the relevant date**" means the date of commencement of the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001.]

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**NOTE**

*Part IIA, and section 15A thereof, were inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Contractual requirements relating to Sunday work.]**

**15B.** (1) Any contract of employment under which a shop worker who satisfies section 15A(2)(a) was employed on the day before the relevant date is unenforceable to the extent that it –

- (a) requires the shop worker to do shop work on Sunday on or after that date, or
- (b) requires the employer to provide the shop worker with shop work on Sunday on or after that date.

(2) Subject to subsection (3), any agreement entered into after the relevant date between a protected shop worker and his employer is unenforceable to the extent that it –

- (a) requires the shop worker to do shop work on Sunday, or

- (b) requires the employer to provide the shop worker with shop work on Sunday.

(3) Where, after giving an opting-in notice, a protected shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(4) For the purposes of section 15A(2)(b), the appropriate date, in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into.]

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**NOTE**

*Section 15B was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Contracts with guaranteed hours.]**

**15C.** (1) This section applies where –

- (a) under the contract of employment under which a shop worker who satisfies section 15A(2)(a) was employed on the day before the relevant date, the employer is, or may be, required to provide him with shop work for a specified number of hours each week,
- (b) under the contract the shop worker was, or might have been, required to work on Sunday before that date, and
- (c) the shop worker has done shop work on Sunday in that employment (whether or not before that day) but has,

on or after that date, ceased to do so.

(2) So long as the shop worker remains a protected shop worker, the contract shall not be regarded as requiring the employer to provide him with shop work on weekdays in excess of the hours normally worked by the shop worker on weekdays before he ceased to do shop work on Sunday.

(3) For the purposes of section 15A(2)(b), the appropriate date in relation to this section is any time in relation to which the contract is to be enforced.]

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**NOTE**

*Section 15C was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Reduction of pay, etc.]**

**15D.** (1) This section applies where –

- (a) under the contract of employment under which a shop worker who satisfies section 15A(2)(a) was employed on the day before the relevant date, the shop worker was, or might have been, required to work on Sunday before the relevant date,
- (b) the shop worker has done shop work on Sunday in that employment (whether or not before that date) but has, on or after that date, ceased to do so, and
- (c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker was intended to be attributable to

shop work on Sunday.

(2) So long as the shop worker remains a protected shop worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker in respect of any period by the relevant proportion.

(3) In subsection (2) "**the relevant proportion**" means the proportion which the hours of shop work which (apart from this Part of this Law) the shop worker could have been required to do on Sunday in the period ("**the contractual Sunday hours**") bears to the aggregate of those hours and the hours of work actually done by the shop worker in the period.

(4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of subsection (3).

(5) For the purposes of section 15A(2)(b), the appropriate date in relation to this section is the end of the period in respect of which the remuneration is paid or the benefit accrues.]

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**NOTE**

*Section 15D was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Notice of objection to Sunday working.]**

**15E.** (1) A shop worker to whom this section applies may at any time give his employer written notice, signed and dated by the shop worker, to the effect that he objects to Sunday working.

(2) In this Part of this Law an "**opting-out notice**" means a notice given under subsection (1) by a shop worker to whom this section applies.

(3) This section applies to a shop worker who under his contract of employment –

(a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice), but

(b) is not employed to work only on Sunday.]

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**NOTE**

*Section 15E was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Opted-out shop workers.]**

**15F.** (1) Subject to subsection (2), a shop worker is regarded as "**opted-out**" for the purposes of any provision of this Part of this Law if (and only if) –

(a) he has given his employer an opting-out notice,

(b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date, and

(c) throughout that period, or throughout every part of it during which his relations with his employer were

governed by a contract of employment, he was a shop worker.

- (2) A shop worker is not an opted-out shop worker if –
- (a) after giving the opting-out notice concerned, he has given his employer an opting-in notice, and
  - (b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(3) In this Part of this Law "**notice period**", in relation to an opted-out shop worker, means, subject to section 15G(2), the period of three months beginning with the day on which the opting-out notice concerned was given.]

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**NOTE**

*Section 15F was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Explanatory statement.]**

**15G.** (1) Where a person becomes a shop worker to whom section 15E applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.

- (2) If –
- (a) an employer fails to comply with subsection (1) in relation to any shop worker, and

- (b) the shop worker, on giving the employer an opting-out notice, becomes an opted-out shop worker,

section 15F(3) has effect in relation to the shop worker with the substitution for "three months" of "one month".

(3) An employer shall not be regarded as failing to comply with subsection (1) in any case where, before the end of the period referred to in that subsection, the shop worker has given him an opting-out notice.

(4) Subject to subsection (5), the prescribed form in the case of a shop worker is as follows –

#### **"STATUTORY RIGHTS IN RELATION TO SUNDAY SHOP WORK**

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must –

be in writing,

be signed and dated by you,

say that you object to Sunday working.

For three months after you give the notice, your employer can still require you to do all the Sunday work your contract provides for.

After the three month period has ended, you have the right to complain to [the Employment and Discrimination Tribunal] if, because of your refusal to work on Sundays on which the shop is open, your employer –

dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday."

(5) The States may by Ordinance amend the prescribed form set out in subsection (4).]

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## **NOTES**

*Section 15G was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

*In section 15(G), the words in square brackets in the prescribed form set out in subsection (4) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 8, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**[Contractual requirements relating to Sunday work.]**

**15H.** (1) Where a shop worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it –

- (a) requires the shop worker to do shop work on Sunday after the end of the notice period, or
- (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(2) Subject to subsection (3), any agreement entered into between an opted-out shop worker and his employer is unenforceable to the extent that it –

- (a) requires the shop worker to do shop work on Sunday after the end of the notice period, or
- (b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(3) Where, after giving an opting-in notice, an opted-out shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(4) For the purposes of section 15F(1)(b), the appropriate date in relation to subsections (2) and (3) of this section is the day on which the agreement is entered into.]

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**NOTE**

*Section 15H was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Unfair dismissal of shop workers who refuse Sunday work.]**

**15I.** (1) Where an employee who is a protected shop worker or an opted-out shop worker is dismissed, he shall be regarded for the purposes of Part II this Law as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Subsection (1) does not apply in relation to an opted-out shop worker where the reason (or principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) A shop worker who is dismissed shall be regarded for the purposes of Part II of this Law as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker gave (or proposed to give) an opting-out notice to the employer.

(4) For the purposes of section 15A(2)(b) or 15F(1)(b), the appropriate date in relation to this section is the effective date of termination.]

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**NOTE**

*Section 15I was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Detriments to shop workers who refuse Sunday work.]**

**15J.** (1) An employee who is a protected shop worker or an opted-out shop worker has the right not to be subjected to any detriment by an act, or any

deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Subsection (1) does not apply to anything done in relation to an opted-out shop worker on the ground that he refused (or proposed to refuse) to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.

(4) Subsections (1) and (3) do not apply where the detriment in question amounts to dismissal.

(5) For the purposes of this section a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by –

- (a) a failure to pay remuneration in respect of shop work on a Sunday which he has not done,
- (b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee, or
- (c) a failure to provide him with any work, remuneration or

other benefit which by virtue of section 15C or 15D the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees –

- (a) who are protected shop workers or opted-out shop workers, or
- (b) who under their contracts of employment are not obliged to do shop work on Sunday,

then, if they agree to do shop work on Sunday or on a particular Sunday, subsection (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

(9) For the purposes of section 15A(2)(b) or 15F(1)(b), the appropriate date in relation to this section is the date of the act or failure to act.

(10) For the purposes of subsection (9) –

- (a) where an act extends over a period, the "**date of an act**" means the first 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 he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(11) On a complaint that an employee has been subjected to a detriment in contravention of this section, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.]

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**NOTE**

*Section 15J was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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**[Remedies.]**

**15K.** (1) Where [the Tribunal] finds a complaint under [section 16(1)(c)] well-founded –

- (a) [it] shall make a declaration to that effect, and
- (b) [it] shall make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) The amount of the compensation awarded under subsection (1) shall be equal to the amount of –

- (a) one month's pay, or

- (b) where the complainant was paid on a weekly basis, four weeks' pay,

or such other amount as the States may by Ordinance specify.

- (3) An award of compensation under this section –

- (a) shall be recoverable as a judgment debt by the complainant from the employer, and
- (b) shall carry interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>fa</sup> from the date of the award until the award is satisfied; and the interest may be recovered by the complainant as part of the award.

[ (4) For the purposes of subsection (2), the amount of a month's pay or (as the case may be) a week's pay –

- (a) shall be an amount equal to –
  - (i) the complainant's average monthly pay during the six month period immediately preceding 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

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<sup>fa</sup> Ordres en Conseil Vol. XXIX, p. 135; amended by Order of the Royal Court No. I of 1996.

of them, or

(ii) where the complainant was paid on a weekly basis, his average weekly pay during the 26 week period immediately preceding that date, or

(b) in a case where, in the opinion of the Tribunal, the basis set out in paragraph (a) for calculating the amount of a month's pay or (as the case may be) a week's pay is inappropriate, shall be calculated on such other basis as the Tribunal may consider to be just and equitable in the circumstances of the case.]

(5) For the purposes of subsection (4) –

(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 he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.]

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**NOTE**

*Section 15K was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

*In section 15K,*

*the words in the first and second pairs of square brackets in subsection (1) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, respectively section 9(a) and section 9(b), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*the words in square brackets in paragraph (a) and paragraph (b) of subsection (1) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 9(c), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*subsection (4) was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 10, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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#### **[Interpretation of Part IIA.**

**15L.** (1) In this Part of this Law "**shop worker**" means an employee who, under his contract of employment, is or may be required to do shop work.

(2) In this Part of this Law "**shop work**" means work in or about a shop in Guernsey on a day on which the shop is open for the serving of customers.

(3) Subject to subsection (4), in this Part of this Law "**shop**" includes any premises where any retail trade or business is carried on.

(4) Where premises are used mainly for purposes other than those of retail trade or business and would not (apart from subsection (3)) be regarded as a shop, only such part of the premises as –

- (a) is used wholly or mainly for the purposes of retail trade or business, or
- (b) is used both for the purposes of retail trade or business



and for the purposes of wholesale trade and is used wholly or mainly for those two purposes considered together,

is to be regarded as a shop for the purposes of this Part of this Law.

(5) In subsection (4)(b) "**wholesale trade**" means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a trade or business.

(6) In this section "**retail trade or business**" includes –

- (a) the business of a barber or hairdresser,
- (b) the business of hiring goods otherwise than for use in the course of a trade or business, and
- (c) retail sales by auction,

but does not include catering business or the sale in theatres and places of amusement of programmes, catalogues and similar items.

(7) In subsection (6) "**catering business**" means –

- (a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold, or
- (b) the sale of meals or refreshments prepared to order for immediate consumption off the premises,

and in paragraph (a) **"intoxicating liquor"** has the same meaning as in section 112 of the Liquor Licensing Ordinance, 1993<sup>fb</sup>.

(8) In this Part of this Law –

**"appropriate date"**, has the meaning given by sections 15B(4), 15C(3), 15D(5), 15H(4), 15I(4) and 15J(9),

**"notice period"**, in relation to an opted-out shop worker, has the meaning given by section 15F(3),

**"opted-out"**, in relation to a shop worker, shall be construed in accordance with section 15F(1) and (2),

**"opting-in notice"**, in relation to a shop worker, has the meaning given by section 15A(5),

**"opting-out notice"**, in relation to a shop worker, has the meaning given by section 15E(2),

**"protected"**, in relation to a shop worker, shall be construed in accordance with section 15A(1) to (5),

**"relevant date"** has the meaning given by section 15A(6).]

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## NOTES

*Section 15L was inserted by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 1, with effect from 1st July, 2002.*

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<sup>fb</sup> Recueil d'Ordonnances Tome XXVI, p. 197.

*The Liquor Licensing Ordinance, 1993 has since been repealed by the Liquor Licensing Ordinance, 2006, section 102(a), with effect from 1st June, 2006, subject to the provisions of section 94 and section 95 of the 2006 Ordinance.*

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### [PART III

#### THE COMPLAINTS PROCEDURE & THE TRIBUNAL

##### **Making of complaints to Tribunal.**

**16.** (1) A complaint against an employer by any person ("the complainant") –

- (a) that he was unfairly dismissed by the employer,
- (b) that the employer unreasonably failed to provide, in accordance with the provisions of section 2, a written statement giving particulars of the reasons for his dismissal or that the particulars of reasons given in purported compliance with that section are inadequate or untrue, or
- [(c) that he has been subjected to a detriment in contravention of section 15J, section 17 of the 2009 Law, or section 17 of the Maternity Leave Ordinance, or]
- [(d) that he (or, if the complaint is being made by an officer acting for the purposes of the 2009 Law, the worker on whose behalf he is making the complaint) qualifies for the minimum wage and is being or has been remunerated by his employer at a rate which is less than the minimum wage, in contravention of section 1(1) of

the 2009 Law,]

may be made to the Tribunal by being presented to the Secretary to the Tribunal ("**the Secretary**").

(2) The Secretary, on receipt of the complaint, shall immediately transmit it –

(a) [...] to [the Committee] in accordance with the provisions of section 20(1), and

(b) [...] to the Convenor of the Employment and Discrimination Panel ("**the Panel**") to enable him or, if he is unavailable, the Deputy Convenor of the Panel to appoint (in accordance with the provisions of section 20(2)[...]) a Tribunal constituted by three members[, and in the case of a complaint under subsection (1)(d), a Tribunal constituted by a single member,] to hear and determine the complaint.]

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## NOTES

*Part III, and section 16 thereof, were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 16,*

*paragraph (c) of subsection (1) was substituted by the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, section 20, Schedule 2, paragraph 4, with effect from 1st April, 2016;<sup>2</sup>*

*paragraph (d) of subsection (1) was inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 2(b), with effect from 1st October, 2010;*

*the words omitted in, first, square brackets in paragraph (a) of subsection (2) and, second, the first and second pairs of square brackets in paragraph (b) thereof were repealed by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, respectively paragraph 3(a) and paragraph 3(b), with effect from 1st October, 2010;*

*the words "the Committee" in square brackets in paragraph (a) of subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;*

*the words in the third pair of square brackets in paragraph (b) of subsection (2) were inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 3(b), with effect from 1st October, 2010.*

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**Time limit for presenting complaints.**

**17.** (1) The Tribunal shall not hear and determine a complaint under section 16(1) unless it is presented to the Secretary –

- (a) within a period of three months beginning on –
  - (i) the effective date of termination, or
  - (ii) in the case of a complaint under section 16(1)(c) [or (d)], 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 time as the Tribunal (constituted by a single member of the Panel) may, on the application of the complainant presented to the Secretary, allow in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the said period of three months.

(2) The Secretary, on receipt of an application for further time under subsection (1)(b), shall immediately transmit it to the Convenor of the Panel to enable him (or, if he is unavailable, the Deputy Convenor of the Panel) to appoint, from the membership of the Panel, a Tribunal (constituted by a single member) to hear and determine that application.

(3) Where the Tribunal, on an application under subsection (1)(b), decides that further time should or should not be allowed for the presentation of a complaint –

- (a) the Tribunal's decision is subject to appeal in accordance with section 25, and
- (b) if the Tribunal (or the Royal Court on appeal under section 25) determines that further time should be allowed for the presentation of the complaint, the single member of the Tribunal who heard the application for further time shall not be appointed as one of the members of the Tribunal who are to hear and determine the complaint.

(4) For the purposes of subsection (1)(a)(ii) –

- (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.

(5) For the purposes of subsection (4)(b), and in the absence of

evidence establishing the contrary, an employer shall be taken to decide on a failure to act –

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(6) The Tribunal shall hear and determine a complaint under section 16(1)[(a) or (b)] if, where the dismissal is with notice, the complaint is presented after the notice is given but before the effective date of termination; and in relation to such a complaint the provisions of this Law, so far as they relate to unfair dismissal, shall have effect –

- (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer,
- (c) as if 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) as if references to an employee ceasing to be employed

included references to an employee having been given notice of dismissal.]

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## NOTES

*Section 17 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 17, the words, letters and parentheses in the first and second pairs of square brackets were inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 4, with effect from 1st October, 2010.*

*The following cases have referred to section 17:*

*Warden v. Fermain Legal Services Limited* (2004) (Unreported, Royal Court, 31st December) (Guernsey Judgment No. 66/2004); 2003-04 GLR Note 35;

*Credit Suisse (Guernsey) Limited v. Carré* 2005–06 GLR 364.

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### **[Form and manner of presenting complaints.]**

**18.** (1) A complaint under section 16(1) and an application for further time under section 17(1)(b) –

- (a) shall be presented to the Secretary in such form and manner, and
- (b) shall be supported by such information and documents, verified in such manner,

as the Secretary may require.

(2) At any time after the receipt of a complaint under section 16(1) or an application for further time under section 17(1)(b), the Secretary may require the complainant or applicant to furnish such additional information and documents,



verified in such manner, as the Secretary thinks fit.]

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**NOTE**

*Section 18 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**[Power to refuse to hear complaints.]**

**19.** (1) The Tribunal shall not hear and determine a complaint under section 16(1)[...] unless satisfied that the provisions of section 20(1) ("conciliation services to be offered") have been complied with.

(2) The Tribunal shall not hear and determine a complaint under section 16(1) or an application for further time under section 17(1)(b) if the complainant or applicant and the employer have signed an agreement in relation to which the conditions set out in section 30A(3) regulating compromise agreements are satisfied.

(3) The Tribunal may refuse to hear and determine a complaint under section 16(1) or an application for further time under section 17(1)(b) –

- (a) in default of compliance by the complainant or applicant with any provision of, or any requirement imposed under, section 18(1) or (2),
- (b) if the complaint or application appears to the Tribunal to be frivolous or vexatious,
- (c) if the complainant or applicant and the employer have

signed an agreement in the prescribed form, countersigned by an officer of [the Committee], stating that they have settled the complaint, or

- (d) if the Tribunal is satisfied that the complainant or applicant and the employer have, otherwise than as mentioned in paragraph (c), settled the complaint by legally binding agreement.

(4) An agreement referred to in subsection (3)(c), being an agreement in the prescribed form stating that the complainant or applicant and the employer have settled the complaint under this Law –

- (a) is legally binding on the parties, and
- (b) in so far as it provides for any payment to be made –
  - (i) is enforceable as a judgment debt by the person to whom the payment is to be made against the other party, and
  - (ii) subject to the provisions of the agreement, carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>h</sup> from the date of the agreement until the payment is satisfied, and the interest may be recovered as part of the payment.]

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<sup>h</sup> Ordres en Conseil Vol. XXIX, p. 135; amended by Order of the Royal Court No. I of 1996.

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## NOTES

*Section 19 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 19,*

*the word, letters and parentheses omitted in square brackets in subsection (1) were repealed by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 5, with effect from 1st October, 2010;*

*the words in square brackets in paragraph (c) of subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

*The following case has referred to section 19:*

*Cotterill v. Cherry (T/A Caring Companions Nursing Agency) (2014) (Unreported, Royal Court, 28th March) (Guernsey Judgment No. 12/2014).*

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### **[Conciliation services to be offered.]**

**20.** (1) When a complaint under [...] section 16(1) is presented to the Secretary under that section, he shall immediately transmit it to [the Committee] which shall –

- (a) use its best endeavours to settle the complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, and
- (b) remit the complaint to the Secretary –
  - (i) if, in its opinion, the complaint cannot be settled by the methods set out in paragraph (a), or

- (ii) in any case, if the complaint is not settled within six weeks of being transmitted to it (or, if an application for further time has been made under section 17(1)(b), within six weeks of the final disposal of the application), unless in its opinion conciliation or negotiations are in progress with a view to a settlement.

(2) Where [the Committee] remits a complaint to the Secretary under subsection (1)(b), he shall inform the Convenor of the Panel of the fact and the Convenor (or, if he is unavailable, the Deputy Convenor of the Panel) shall appoint, from the membership of the Panel, a Tribunal (constituted by three members [or, subject to section 20A, in the case of a complaint under section 16(1)(d), one member]) to hear and determine the complaint.

(3) The opinion of [the Committee] as to the matters set out in subsection (1)(b)(i) and (ii) is final.

(4) Nothing communicated to [the Committee] or any member or officer thereof in relation to the performance of their functions under subsection (1)(a) is admissible in evidence in any proceedings before the Tribunal except with the consent of the person who so communicated it.]

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## NOTES

*Section 20 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 20,*

*the words, letters and parentheses omitted in the first pair of square brackets in subsection (1) were repealed and the words in the second pair of*

*square brackets in subsection (2) were inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 5, with effect from 1st October, 2010;*

*the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

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**[Tribunal may remit minimum wage complaints for hearing by a three member Tribunal.]**

**20A.** Where a complaint is made under section 16(1)(d), the Tribunal may direct, of its motion or on an application from either party, that the complaint be remitted for hearing by a Tribunal constituted by three members.]

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**NOTE**

*Section 20A was inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 6, with effect from 1st October, 2010.*

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**[Compensation for unfair dismissal.]**

**21.** Where the Tribunal finds that the grounds of a complaint under section 16(1)(a) are well-founded, it shall make an award of compensation for unfair dismissal –

- (a) which is recoverable as a judgment debt by the complainant from the employer, and
- (b) which carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>i</sup> from the date of

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<sup>i</sup> Ordres en Conseil Vol. XXIX, p. 135, amended by Order of the Royal Court No. I of 1996.

the award until the award is satisfied, and the interest may be recovered by the complainant as part of the award.]

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**NOTE**

*Section 21 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**[Amount of award.]**

**22.** (1) Subject to the provisions of section 23, the amount of an award of compensation for unfair dismissal is a sum equal to –

- (a) six month's pay, or
- (b) where the complainant is paid on a weekly basis, one week's pay multiplied by 26,

or such other amount as the States may by Ordinance specify.

(2) For the purposes of subsection (1), the amount of a month's pay or (as the case may be) a week's pay –

- (a) shall be an amount equal to the complainant's average monthly pay during the six month period immediately preceding the effective date of termination or (where the complainant was paid on a weekly basis) his average weekly pay during the 26 week period immediately preceding that date, or

- (b) in a case where, in the opinion of the Tribunal, the basis set out in paragraph (a) for calculating the amount of a month's pay or (as the case may be) a week's pay is inappropriate, shall be calculated on such other basis as the Tribunal may consider to be just and equitable in the circumstances of the case.]

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**NOTE**

*Section 22 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**[Reduction of award in certain cases.]**

23. (1) Where in relation to a complaint of unfair dismissal under section 16(1)(a) the Tribunal finds that the complainant has unreasonably refused an offer by the employer which, if accepted, would have had the effect of reinstating him in his employment in all respects as if he had not been dismissed, the Tribunal shall reduce the amount of the award of compensation to such extent as it considers just and equitable having regard to that finding.

(2) Where in relation to such a complaint the Tribunal considers that, by reason of any circumstances other than those mentioned in subsection (1), it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal to any extent, the Tribunal shall, subject to subsection (3) [and subsection (4)], reduce that amount accordingly.

(3) Subsection (2) does not apply if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for

selecting the employee for dismissal, was one of those specified in –

- (a) section 8(1), section 9, section 11(1) (read with 11(2) and (3)), section 12(1) (read with 12(2) and (3)), section 15I(1) (read with 15I(2)) or section 15I(3), or
- (b) section 6(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001<sup>ia</sup> (read with section 6(2) of that Law).

[ (4) Subsection (2) does not apply where the dismissal of the employee constituted an act of discrimination against him prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.]]

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## NOTES

*Section 23 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 23, subsection (4), and the words in square brackets in subsection (2), were inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, respectively section 70(6) and section 70(5), with effect from 1st March, 2006.*

*The following cases have referred to section 23:*

*Credit Suisse (Guernsey) Limited v. Carré* 2005–06 GLR 364;  
*A J Troalic & Sons v. Kinsey* (2010) (Unreported, Royal Court, 9th April) (Guernsey Judgment No 19/2010); 2007-08 GLR Note 19;  
*Cams Limited v. Cluer* (2012) (Unreported, Royal Court, 20th February) (Guernsey Judgment No. 6/2012);  
*Harlequin Hire Cars v. Dent* (2014) (Unreported, Royal Court, 13th June) (Guernsey Judgment No. 26/2014);  
*Sahara City Co. Limited v. Chiverton* [2019]GRC070 (Unreported,

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<sup>ia</sup> Order in Council No. XVIII of 2001.



Royal Court, 18th December).

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**[Remedies for failure to give written statement of reasons for dismissal.]**

**24.** (1) Where the Tribunal finds a complaint under section 16(1)(b) well-founded –

- (a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee, and
- (b) it shall make an award that the employer pay to the employee a sum equal to the amount of –
  - (i) half a month's pay, or
  - (ii) where the complainant was paid on a weekly basis, two weeks' pay,

or such other amount as the States may by Ordinance specify.

(2) An award under subsection (1)(b) –

- (a) is recoverable as a judgment debt by the employee from the employer, and
- (b) carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>ib</sup> from the date of the award

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<sup>ib</sup> Ordres en Conseil Vol. XXIX, p. 135; amended by Order of the Royal Court No. I of 1996.

until the award is satisfied; and the interest may be recovered by the employee as part of the award.

(3) For the purposes of subsection (1)(b), the amount of a month's pay or (as the case may be) a week's pay –

- (a) shall be an amount equal to the complainant's average monthly pay during the six month period immediately preceding the effective date of termination or (where the complainant was paid on a weekly basis) his average weekly pay during the 26 week period immediately preceding that date, or
- (b) in a case where, in the opinion of the Tribunal, the basis set out in paragraph (a) for calculating the amount of a month's pay or (as the case may be) a week's pay is inappropriate, shall be calculated on such other basis as the Tribunal may consider to be just and equitable in the circumstances of the case.]

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**NOTE**

*Section 24 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**[Determination of minimum wage complaints.]**

**24A.** (1) Where the Tribunal finds a complaint under section 16(1)(d) well-founded, it shall make a declaration to that effect and make an award of compensation in the sum of the amount described in section 10(2) of the 2009 Law.

- (2) An award under this section –
- (a) shall be recoverable as a judgment debt by the complainant from the employer, and
  - (b) shall carry interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 from the date of the order until the amount is paid; and the interest may be recovered by the complainant as part of the order.]

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**NOTE**

*Section 24A was inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 7, with effect from 1st October, 2010.*

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**[Appeals from Tribunal to Royal Court.]**

**25.** (1) A person aggrieved by a decision or award of the Tribunal on a question of law may, subject to the provisions of subsections (2) and (3), appeal therefrom to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) No decision or award of the Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the complaint under this Law from presenting his case fairly before the Tribunal.

(3) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 26.]

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**NOTES**

*Section 25 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*The following Orders have been made by the Royal Court under section 25:*

*Employment Protection (Appeals and References) Order, 2006;  
Employment Protection (Appeals and References) (Amendment) Order, 2011.*

*The following cases have referred to section 25:*

*Da Mata v George t/as Private Home Care (2008) (Unreported, Royal Court, 7th July) (Guernsey Judgment No 22/2008);  
Cotterill v. The States of Guernsey (2017) (Unreported, Royal Court, 19th December) (Guernsey Judgment No. 58/2017).*

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**[Reference of points of law to Royal Court.]**

**26.** A question of law arising in connection with the hearing and determination by the Tribunal of a complaint under this Law may, if the Tribunal thinks fit, be referred for decision to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.]

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**NOTES**

*Section 26 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*The following Orders have been made by the Royal Court under section 26:*

*Employment Protection (Appeals and References) Order, 2006;  
Employment Protection (Appeals and References) (Amendment)*

Order, 2011.

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**[Appeals from Royal Court to Court of Appeal.]**

27. (1) An appeal from a decision of the Royal Court made on an appeal under section 25 or on a reference under section 26 lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>ic</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.]

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**NOTE**

*Section 27 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**[Interpretation of awards.]**

28. (1) Any party to an award of the Tribunal may, within a period of one month immediately following the date of the award (or such other period as the Tribunal may in its absolute discretion allow), apply to the Tribunal for a decision on any question as to the interpretation of the award.

(2) The Tribunal shall, before making such a decision, hear any representations of the parties as to the question in issue.

(3) The decision of the Tribunal on an application under

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<sup>ic</sup> Ordres en Conseil Vol. XVIII, p. 315.

subsection (1) shall be stated in writing to the parties and has effect as if it were an original award.]

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## NOTES

*Section 28 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*The following ruling has referred to section 28:*

*Convenor of the Employment and Discrimination Panel & the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 (2014) (Unreported, Royal Court, 7th February) (Guernsey Judgment No. 8/2014).*

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### **[Awards to be recoverable as preferred debts.]**

**29.** For the purposes of section 1 of the Preferred Debts (Guernsey) Law, 1983 (the "**Preferred Debts Law**"), in the distribution of the property of a person whose affairs have been declared to be in a state of désastre at a meeting of his arresting creditors held before a Jurat as Commissioner, and in the winding up of a company which is insolvent –

- (a) an [award under section 15K, 21, 24 or 24A] of this Law ranks equally with –
  - (i) the debts to which section 1(1)(b) of the Preferred Debts Law relates, and
  - (ii) any award of compensation under section 45 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005,

and shall be paid in full, unless the assets are insufficient, in which case the [award under section 15K, 21, 24 or 24A] of this Law and the debts and award described in subparagraphs (i) and (ii) shall abate in equal proportions,

- (b) subject to the provisions of paragraph (a), an [award under section 15K, 21, 24 or 24A] of this Law is payable in priority to all debts other than debts to which section 1(1)(a) of the Preferred Debts Law relates, and
- (c) notwithstanding the provisions of paragraphs (a) and (b), the amount of an [award under section 15K, 21, 24 or 24A] of this Law to which priority is to be given under those provisions shall not, in the case of any one claimant, exceed £3,000 or such greater sum as may for the time being be prescribed by Ordinance of the States for the purposes of section 1(2) of the Preferred Debts Law.]

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#### NOTES

*Section 29 was substituted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 70(7), with effect from 1st March, 2006.<sup>3</sup>*

*In section 29, the words, figures and letters in square brackets were substituted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 8, with effect from 1st October, 2010.*

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#### **[Awards to be payable in addition to other remedies.]**

**30.** An [award under section 15K, 21, 24 or 24A] is in addition to any other right or remedy relating to or arising from the complaint or the circumstances

thereof, and accordingly (without prejudice to the generality of the foregoing) the award is not deductible from any damages that may be awarded, whether by a court of law or otherwise, or from any other payment that may become due, in respect or as a consequence thereof.]

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## NOTES

*Section 30 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 30, the words, figures and letters in square brackets were substituted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 8, with effect from 1st October, 2010.*

*The following case has referred to section 30:*

*Good v. Credit Suisse (Guernsey) Limited 2009–10 GLR 183.*

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## **[Restrictions on contracting out, and compromise agreements.]**

**30A.** (1) Any provision in an agreement (whether a contract of employment or not) is 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 proceedings under this Law before the Tribunal.

(2) Subsection (1) does not apply to –

- (a) any provision of an agreement relating to dismissal from employment such as is mentioned in section



4(1)(b),

- (b) an agreement settling a complaint under this Law in the circumstances described in section 19(3)(c) or (d),
  - (c) an agreement settling a complaint under this Law made with the assistance of [the Committee] pursuant to section 20(1)(a), or
  - (d) an agreement to refrain from instituting or continuing any proceedings under this Law before the Tribunal if the conditions regulating compromise agreements are satisfied in relation to the agreement.
- (3) The conditions regulating compromise agreements are that –
- (a) the agreement is in writing,
  - (b) the agreement relates to the particular proceedings,
  - (c) the employee has received advice from an independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before the Tribunal,
  - (d) there is 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 identifies the adviser, and
- (f) the agreement states that the conditions regulating compromise agreements under this Law are satisfied.

(4) A person is an independent adviser for the purposes of subsection (3)(c) –

- (a) if he is a lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
- (c) if he is a person of a description specified in an Ordinance of the States.

(5) But a person is not an independent adviser for the purposes of subsection (3)(c) in relation to the employee –

- (a) if he is, or is employed by, or is acting in the matter for, the employer or an associated employer,
- (b) in the case of a person within subsection (4)(b), if the trade union is the employer or an associated employer, or
- (c) in the case of a person of a description specified in an Ordinance under subsection (4)(c), if any condition

specified in the Ordinance in relation to the giving of advice by persons of that description is not satisfied.

- (6) In subsection (4)(a) "**lawyer**" means –
- (a) an Advocate of the Royal Court,
  - (b) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, or
  - (c) a Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland, or in Scotland.]

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## NOTES

*Section 30A was inserted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006.*

*In section 30A, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

*In accordance with the provisions of the Minimum Wage (Guernsey) Law, 2009, section 19, with effect from 1st October, 2010, the provisions of this section shall apply in relation to the provisions of that Law, and to proceedings under that Law before the Tribunal, as they apply in relation to the provisions of this Law, and to proceedings under this Law before the Tribunal.*

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## **[[Tribunal may join complaints]].**

**30B.** In any case where a complainant –

- (a) has made a complaint to the Tribunal against a person

under section 16(1)(a), (b) [, (c) or (d)], and

- (b) has also made a complaint to the Tribunal against that person under section 38(1)(a) or (b) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005,

the Tribunal may, if it thinks it desirable to do so, decide that it shall hear and determine both complaints at the same time and, where the Tribunal so decides, the provisions of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 apply in relation to the complaint under section 36(1)(a) or (b) of that Ordinance in all respects.]

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#### NOTES

*Section 30B was inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 70(8), with effect from 1st March, 2006.*

*In section 30B,*

*the marginal note thereto was substituted by the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, section 20, Schedule 2, paragraph 5, with effect from 1st April, 2016;<sup>4</sup>*

*the word, letters, parentheses and punctuation in square brackets were substituted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 9, with effect from 1st October, 2010.*

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#### **[Minimum wage decisions to be binding.]**

**30C.** For the avoidance of doubt –

- (a) any order, decision or finding of law or fact made by the Tribunal in proceedings in respect of a complaint under section 16(1)(d) shall (subject to section 25) be

final and conclusive for the purposes of any civil proceedings to recover the amount described in section 10(2) of the 2009 Law arising out of the same or substantially the same facts, issues or circumstances, and

- (b) any order, decision or finding of law or fact made by a court in civil proceedings to recover the amount described in section 10(2) of the 2009 Law shall be final and conclusive for the purposes of any proceedings before the Tribunal in respect of a complaint under section 16(1)(d) arising out of the same or substantially the same facts, issues or circumstances.]

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**NOTE**

*Section 30C was inserted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 10, with effect from 1st October, 2010.*

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**PART IV**  
**GENERAL PROVISIONS**

**Codes of practice.**

**31.** (1) The [Committee] may issue codes of practice containing such practical guidance (whether for employers or for employees or for both) as the [Committee] thinks fit –

- (a) for the purposes of ensuring that employees are not unfairly dismissed and advising as to the steps to be taken to ensure that employers act reasonably and not

unfairly, and

(b) generally for the purposes of this Law.

(2) When the [Committee] proposes to issue a code of practice –

(a) it shall prepare and publish a draft of that code,

(b) it shall consider any representations made to it about the draft, and

(c) it may modify the draft accordingly.

(3) In the course of preparing any draft code of practice for eventual publication under subsection (2), the [Committee] shall consult with –

(a) such organisations, or associations of organisations, respectively representative of employers and employees in Guernsey, and

(b) such other organisations or bodies,

as appear to the [Committee] to be appropriate.

(4) If the [Committee] determines to proceed with the draft, it shall cause the draft to be laid before a meeting of the States and, if at that or the next meeting the States resolve to annul the draft, it shall not come into force.

(5) The [Committee] shall, unless the States resolve under subsection (4) to annul the draft, issue the code in the form of the draft.

(6) The code shall come into force on the day specified therein, which shall not be earlier than the day of the second meeting of the States referred to in subsection (4).

(7) A code may contain such transitional or savings provisions as appear to the [Committee] to be necessary or expedient.

(8) The [Committee] may from time to time revise the whole or any part of a code of practice issued under this section by issuing revisions to the code; and subsections (2) to (6) shall apply (with appropriate modifications) to the issue of revisions to a code as they apply to the first issue of a code.

(9) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under this Law before [the Tribunal] any code of practice issued under this section shall be admissible in evidence, and if any provision of the code appears to [the Tribunal] to be relevant to any question arising in the proceedings (including, without limitation, any question as to whether an employer has acted reasonably or unreasonably for the purposes of section 6(3)) that provision shall be taken into account in determining that question.

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## NOTES

*In section 31,*

*the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;*

*the words in the first and second pairs of square brackets in subsection (9) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, respectively section 12(a) and section 12(b), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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**Delegation of powers.**

32. (1) The [Committee] may resolve that any of its functions under this Law may be performed in its name by any one or more individual members or officers of the [Committee] [...].

(2) A function performed in pursuance of a resolution under subsection (1) shall be considered for all purposes to have been performed by the [Committee]; and any decision taken or other thing done pursuant to the resolution shall have effect as if taken or done at a quorate meeting of the [Committee].

(3) The [Committee] may by resolution vary or revoke a resolution under subsection (1), but without prejudice to anything previously done pursuant thereto or to the making of a new resolution.

(4) Nothing contained in this section or in a resolution under subsection (1) –

- (a) prevents the carrying out of a function by the [Committee],
- (b) affects the operation in relation to the [Committee] of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>k</sup>.

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**NOTES**

*In section 32,*

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<sup>k</sup> Order in Council No. XXI of 1991.



*the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;*

*the words omitted in square brackets in subsection (1) were repealed by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 13, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

---

### **Proof of documents.**

**33.** In any legal proceedings (including proceedings under this Law before [the Tribunal]) a document purporting to be a document issued by or on behalf of the [Committee] and to be signed by a member or officer thereof [...] –

- (a) shall be received in evidence,
- (b) shall, unless the contrary is proved, be deemed to be the document which it purports to be and to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
- (c) shall be evidence of the matters stated therein.

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### **NOTES**

*In section 33,*

*the words in the first pair of square brackets were substituted, and the words omitted in the third pair of square brackets were repealed, by the Employment Protection (Guernsey) (Amendment) Law, 2005, respectively section 14(a) and section 14(b), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*the word in the second pair of square brackets was substituted by the*

*Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016,  
section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

---

**Interpretation.**

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

[ ...]

[ ...]

**"associated employer"** shall be construed in accordance with subsection (2),

**"[Committee]"** means the States of Guernsey [Committee for Employment & Social Security],

[ **"business"** includes a trade or profession and includes any activity carried on by a body of persons (whether corporate or unincorporated),]

**"capability"** shall be construed in accordance with section 7,

[ **"complaint under this Law"** means a complaint under section 16(1)(a), (b) or (c),]

[**"compromise agreement"** means an agreement in relation to which the conditions set out in section 30A(3) regulating compromise agreements are satisfied,]

[ **"continuously employed"** and related expressions shall, subject to the provisions of any Ordinance under subsection (4), be construed in accordance with the Schedule,]

**"contract of employment"** means a contract of service or apprenticeship, whether express or implied and whether written or oral,

[ **"Convenor"** of the Panel means the person designated by the States as Convenor of the Panel under section 1 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,]

**"dismiss"** and **"dismissal"** shall be construed in accordance with section 5(1),

[ ...]

**"effective date of termination"** shall be construed in accordance with section 5(4),

**"employee"** means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment,

**"employer"**, in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed,

**"employers' association"** means an organisation (temporary or permanent) –

- (a) which consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions and whose principal purposes include the regulation of relations between employers of that description or those descriptions and employees or

trade unions, or

- (b) which consists wholly or mainly of –
  - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
  - (ii) representatives of such constituent or affiliated organisations,

and whose principal purposes include the regulation of relations between employers and employees or employers and trade unions, or the regulation of relations between its constituent or affiliated organisations; and references in this Law to employers' associations include combinations of employers and employers' associations,

**"employment"** means employment under a contract of employment, and cognate expressions shall be construed accordingly,

**"Guernsey"** includes Herm and Jethou,

**"independent trade union"** means a trade union which –

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations, and

- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control,

and, in relation to a trade union, "**independent**" and "**independence**" shall be construed accordingly,

[ "**Maternity Leave Ordinance**" means the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 (see section 9(1)(b)),]

[ ...]

[ "**Panel**" means the Employment and Discrimination Panel established under section 1 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,]

"**pay**", [in sections 15K, 22 and 24,] means all wages or salary (whether or not earned wholly or in part by way of commission) paid to the employee in question pursuant to his contract of employment, including –

- (a) overtime rates, shift pay and holiday pay, and
- (b) any other pecuniary benefit paid to him in cash,

in each case before the making of any deductions from the gross amounts payable, whether in respect of income tax or social insurance contributions or otherwise,

"**position**", in relation to an employee, means the following matters

taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment,

**"prescribed"** means prescribed by order of the [Committee],

**"qualifications"** shall be construed in accordance with section 7,

**"redundancy"**, and cognate expressions, shall be construed in accordance with subsection (3),

**"redundancy case"** shall be construed in accordance with section 13(3),

**"Royal Court"** means the Royal Court sitting as an Ordinary Court,

[ **"Secretary"** means the Secretary to the Tribunal appointed by [the Committee] under section 6 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, and includes any deputy Secretary so appointed,]

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

**"trade union"** means an organisation (temporary or permanent) –

- (a) which consists wholly or mainly of employees of one or

more descriptions and whose principal purposes include the regulation of relations between employees of that description or those descriptions and employers or employers' associations, or

- (b) which consists wholly or mainly of –
  - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
  - (ii) representatives of such constituent or affiliated organisations,

and whose 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 organisations,

[ "**Tribunal**" means the Employment and Discrimination Tribunal established under section 2 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,]

**"week"** means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and, in relation to any other employee, a week ending with Saturday.

(2) For the purposes of this Law any two employers are to be treated as "**associated**" if –

- (a) one is a company of which the other (directly or indirectly) has control, or
- (b) both are companies of which a third person (directly or indirectly) has control,

and the expression "**associated employer**" shall be construed accordingly.

(3) 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 attributable wholly or mainly to –

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased or diminished or are expected to cease or diminish,

and for the purposes of this subsection –

- (i) the business of the employer together with the



business or businesses of his associated employers shall be treated as one unless either of the conditions specified in this subsection would be satisfied without so treating those businesses, and

- (ii) the expression "**cease**" means cease either permanently or temporarily and from whatever cause, and "**diminish**" has a corresponding meaning.

(4) For the purposes of this Law the States may by Ordinance make such provision as they think fit as to the meaning of the expressions "continuously employed"[, "pay", "month's pay" and "week's pay" and any cognate expressions]; and such an Ordinance may include provision amending any provision of this Law.

(5) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

(6) For the purposes of this Law it is immaterial whether the law which (apart from this Law) governs a person's employment is the law of Guernsey or not.

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## NOTES

*In section 34,*

*the words omitted in the first and second pairs of square brackets, in the square brackets immediately after the definition of the expressions "dismiss" and "dismissal" and in the square brackets immediately after the*

*definition of the expression "Maternity Leave Ordinance" in subsection (1) were repealed by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 15(a), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*the words, first, "the Committee" and, second, "Committee for Employment & Social Security" in square brackets in the definition of the expression "the Committee" in subsection (1) and, third, the words "the Committee" in square brackets wherever else occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 4, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1 and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;<sup>5</sup>*

*the definitions of the expressions "business", "complaint under this Law", "compromise agreement", "continuously employed", "Convenor", "Panel", "Secretary" and "Tribunal" were inserted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 15(c), with effect from 1st March, 2006;*

*the definition of the expression "Maternity Leave Ordinance" in subsection (1) was inserted by the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, section 20, Schedule 2, paragraph 6, with effect from 1st April, 2016;*

*the words in square brackets in the definition of the expression "pay" in subsection (1) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 15(b), with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*the words in square brackets in subsection (4) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 16, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>6</sup>*

*The following case has referred to section 34:*

*Sahara City Co. Limited v. Chiverton* [2019]GRC070 (Unreported, Royal Court, 18th December).

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**[Power to amend Law by Ordinance.]**

**34A.** (1) The States may by Ordinance amend any provision of this Law.

(2) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).]

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**NOTES**

*Section 34A was inserted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 17, with effect from 1st March, 2006.*

*The following Ordinance has been made under section 34A:*

*Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016.*

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**General provisions as to subordinate legislation.**

- 35.** (1) An Ordinance or order under this Law –
- (a) may be amended or repealed by a subsequent Ordinance or (as the case may be) order hereunder,
  - (b) may contain such consequential, incidental, supplemental and transitional provision (including provision for the payment of fees) as may appear to the States [or the Royal Court] or (as the case may be) the [Committee] to be necessary or expedient,
  - (c) in the case of an order [of the [Committee]], shall be laid before a meeting of the States as soon as possible

and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.

(2) Any power conferred by this Law to make an Ordinance or order may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any conditions prescribed in the Ordinance or (as the case may be) the order.

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**NOTES**

In section 35,

*the words in the first pair of square brackets in paragraph (b) and in square brackets in paragraph (c) of subsection (1) were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, respectively section 18 and section 19, with effect from 1st March, 2006;*

*the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

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### **Amendment of Industrial Disputes Law and Preferred Debts Law.**

36. (1) After section 3(5) of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993<sup>m</sup> insert the following subsection –

"(6) Nothing communicated to the Industrial Disputes Officer or to any member or officer of the Board in relation to the performance of functions under subsection (1) shall be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who so communicated it."<sup>7</sup>

(2) In section 18(1) of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, in the definition of "industrial dispute", after the words "of any person" insert –

"other than a dispute under the Employment Protection (Guernsey) Law, 1998 (being a complaint under section 17(1)(a) or (b) of that Law relating to unfair dismissal or a failure to provide a written statement of reasons for dismissal)".

---

<sup>m</sup> Order in Council No. I of 1993.

(3) After section 1(7) of the Preferred Debts (Guernsey) Law, 1983<sup>n</sup>, insert the following subsection –

"(8) The provisions of this section are subject to the provisions of section 29 of the Employment Protection (Guernsey) Law, 1998 ("awards to be recoverable as preferred debts").".

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**NOTE**

*For subsequent amendments to section 18(1), see the consolidated text of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993.*

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**Service of documents.**

**37.** (1) Any document other than a summons to be given or served under or for the purposes of this Law may be given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the

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<sup>n</sup> Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; and No. III of 1993; section 1(7) was inserted by No. III of 1993.

Bailiwick,

- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on [the Secretary, the Tribunal] or the [Committee], by being left at, or sent by post or transmitted to, the principal offices of the [Committee] in Guernsey,

and in this section the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post and the expression "**transmitted**" means transmitted by telex, facsimile transmission or other similar means which produce a document containing the text of the communication.

(2) If a person notifies [the Secretary, the Tribunal] or the [Committee] of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being –

- (a) published in La Gazette Officielle on two occasions falling in successive weeks,
- (b) affixed to the notice board inside the vestibule of the

Royal Court House,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on [the Secretary, the Tribunal] or the [Committee] under or for the purposes of this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of this Law.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the



Bills of Exchange (Guernsey) Law, 1958, as amended<sup>o</sup>.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

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## NOTES

*In section 37,*

*the words "the Secretary, the Tribunal" in square brackets, wherever occurring, were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 20, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

*In accordance with the provisions of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1) and section 1(2), with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, the reference in this section to a "minor" shall be construed as a reference to a person under the age of 18 years.*

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section of that section are satisfied.*

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## **Records of proceedings.**

**38.** The [Committee] shall preserve records of all proceedings before [the Tribunal] for six years or for such other period as may be prescribed.

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<sup>o</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.

## NOTES

*In section 38,*

*the word in the first pair of square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;*

*the words in the second pair of square brackets were substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 21, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

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### **[[Committee] to co-operate with Tribunal.**

**39.** The [Committee] and its members and officers shall, subject to the provisions of section 20(4), give the Tribunal any document or information which is in their possession, custody or power and which is required by the Tribunal to enable it to hear and determine a complaint under this Law.]

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## NOTES

*Section 39 was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 22, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*In section 39, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.*

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### **Citation.**

**40.** This Law may be cited as the Employment Protection (Guernsey) Law, 1998.

### **Commencement.**

**41.** This Law shall come into force on the day appointed by Ordinance of

the States, and such an Ordinance may –

- (a) appoint different days for different provisions and different purposes,
- (b) include such savings and incidental, consequential, supplemental and transitional provisions as the States may consider necessary or expedient for the purposes of the implementation or administration of this Law.

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**NOTE**

*The Law was brought into force on 4th January, 1999 by the Employment Protection (Guernsey) Law, 1998 (Commencement) Ordinance, 1998, section 1.*

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[SCHEDULE  
CONTINUOUS EMPLOYMENT

Section 34(1)

**Introductory.**

1. (1) References in any provision of this Law to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Schedule.

(2) In any provision of this Law which refers to a period of continuous employment expressed in months or years –

(a) a month means a calendar month, and

(b) a year means a year of twelve calendar months.

(3) In computing an employee's period of continuous employment for the purposes of any provision of this Law, any question –

(a) whether the employee's employment is of a kind counting towards a period of continuous employment, or

(b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with paragraph 2.

(4) Subject to paragraph 6, a week which does not count in

computing the length of a period of continuous employment breaks continuity of employment.

(5) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

**Period of continuous employment.**

2. (1) An employee's period of continuous employment for the purposes of any provision of this Law –

- (a) begins, subject to sub-paragraph (2), with the day on which the employee starts work, and
- (b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

(2) If an employee's period of continuous employment includes one or more periods which, by virtue of paragraph 6(1) and (2), while not counting in computing the length of the period, do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the paragraph in question.

**Weeks counting in computing period.**

3. (1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(2) Subject to sub-paragraph (3), any week (not within sub-paragraph (1)) during the whole or part of which an employee is –

- (a) incapable of work in consequence of sickness or injury,
- (b) absent from work on account of a temporary cessation of work, or
- (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose,

counts in computing the employee's period of employment.

(3) Not more than 26 weeks count under sub-paragraph (2)(a) between any periods falling under sub-paragraph (1).

**Intervals in employment.**

4. Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of section 5(4) is treated for certain purposes as the effective date of termination by virtue of section 5(5), the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 2(2) or 15(1) the period for which the employee has been continuously employed.

**Employment abroad, etc.**

5. This Schedule applies to a period of employment –

- (a) even where during the period the employee was engaged in work wholly or mainly outside Guernsey, and
- (b) even where the employee was excluded by or under this

Law from any right conferred by this Law.

**Industrial disputes.**

6. (1) A week does not count under paragraph 3 if during the week, or any part of the week, the employee takes part in a strike.

(2) The continuity of an employee's period of employment is not broken by a week which does not count under this Schedule (whether or not by virtue only of sub-paragraph (1)) if during the week, or any part of the week, the employee takes part in a strike; and the number of days which, for the purposes of paragraph 2(2), fall within the intervening period is the number of days between the last working day before the strike and the day on which work was resumed.

(3) The continuity of an employee's period of employment is not broken by a week if during the week, or any part of the week, the employee is absent from work because of a lock-out by the employer.

**Change of employer.**

7. (1) Subject to the provisions of this paragraph, this Schedule relates only to employment by the one employer.

(2) If a trade or business, or an undertaking (whether or not established by or under an enactment), is transferred from one person to another –

- (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and
- (b) the transfer does not break the continuity of the period of employment.

(3) If by or under an enactment (whether passed before or after this Law) a contract of employment between a body corporate and an employee is modified and some other body corporate is substituted as the employer –

- (a) the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second body corporate, and
- (b) the change of employer does not break the continuity of the period of employment.

(4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased –

- (a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and
- (b) the death does not break the continuity of the period of employment.

(5) If there is a change in the partners, personal representatives or trustees who employ any person –

- (a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and
- (b) the change does not break the continuity of the period



of employment.

(6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer –

- (a) the employee's period of employment at that time counts as a period of employment with the second employer, and
- (b) the change of employer does not break the continuity of the period of employment.

**Reinstatement or re-engagement of dismissed employee.**

8. The States may by Ordinance make provision for preserving the continuity of a person's period of employment for the purposes of this Schedule in cases where a dismissed employee is reinstated, re-engaged or otherwise re-employed by his employer or by a successor or associated employer of that employer in any circumstances prescribed by the Ordinance.]

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**NOTES**

*The Schedule was substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 23, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.*

*The following cases have referred to the Schedule:*

*Warden v. Fermain Legal Services Limited* (2004) (Unreported, Royal Court, 31st December) (Guernsey Judgment No. 66/2004); 2003-04 GLR Note 35;

*Credit Suisse (Guernsey) Limited v. Carré* 2005–06 GLR 364;

*Sahara City Co. Limited v. Chiverton* [2019]GRC070 (Unreported, Royal Court, 18th December);

*Sahara City Co. Limited v. Chiverton* [2021]GRC002 (Unreported,

Royal Court, 6th January).

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<sup>1</sup> Prior to its substitution, subsection (2) was amended by the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, section 2(5), with effect from 1st July, 2002.

<sup>2</sup> Prior to its substitution, paragraph (c) of subsection (1) was amended by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 2(a), with effect from 1st October, 2010.

<sup>3</sup> Section 29 was previously substituted by the Employment Protection (Guernsey) (Amendment) Law, 2005, section 11, with effect from 1st March, 2006, subject to the savings in, first, section 24 of the 2005 Law and, second, section 9 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.

<sup>4</sup> The marginal note was previously substituted by the Minimum Wage (Guernsey) Law, 2009, section 30, Schedule, paragraph 9, with effect from 1st October, 2010.

<sup>5</sup> The words "Committee for Employment & Social Security" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

<sup>6</sup> The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Law were previously transferred to them from the Board of Industry and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 5, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

<sup>7</sup> For subsequent amendments, see the consolidated text of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993.