

# PROJET DE LOI

ENTITLED

## **The Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 \***

*[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. XVIII of 2001, Ordres en Conseil Vol. XLI, p. 605; as amended by the Population Management (Guernsey) Law, 2016 (No. VI of 2016); the Transfer of States Undertakings (Protection of Employment) (Amendment) Ordinance, 2001 (No. XXVII of 2001, Recueil d'Ordonnances Tome XXVIII, p. 478); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). The Law is applied and modified, in part, by the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001 (No. XXVI of 2001, Recueil d'Ordonnances Tome XXVIII, p. 477); the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001 (No. XXV 2001, Recueil d'Ordonnances Tome XXVIII, p. 475); the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019 (No. \*\* of 2019). See also the Arbitration (Guernsey) Law, 2016 (No. X of 2016).

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## **The Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001**

### ARRANGEMENT OF SECTIONS

1. Law applicable to transfer of Telecommunications undertaking.
2. Effect of transfer on contracts of employment, etc.
3. Effect of transfer on collective agreements.
4. Non-application of sections 2 and 3 to public servants' pension scheme.
5. Obligations of transferee as to pension arrangements.
6. Dismissal of employee because of transfer of undertaking.
7. Effect of transfer on union recognition.
8. Restriction on contracting out.
9. Interpretation.
10. Power to extend Law to transfers of other States undertakings.
11. ...
12. Amendment of Employment Protection Law.
13. General provisions as to Ordinances.
14. Citation.
15. Commencement.

# PROJET DE LOI

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## **The Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001**

**THE STATES**, in pursuance of their Resolutions of the 26<sup>th</sup> January, 2000<sup>a</sup> and the 16<sup>th</sup> March, 2000<sup>b</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 Island of Guernsey.

### **Law applicable to transfer of Telecommunications undertaking.**

1. (1) Subject as hereinafter provided, this Law applies to a transfer from the States to another person of the undertaking of the States Telecommunications Board ("**the undertaking**") or any part of the undertaking.

(2) Subject as aforesaid, this Law so applies –

(a) whether the transfer is effected by sale, by some other disposition or by operation of law,

(b) notwithstanding –

(i) that persons employed in the undertaking or part transferred ordinarily work outside Guernsey,

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<sup>a</sup> Article II of Billet d'État No. II of 2000.

<sup>b</sup> Proposition 2 of Article III of Billet d'État No. VIII of 2000.

- (ii) that the employment of any of those persons is governed by the law of a country or territory outside Guernsey.
- (3) A transfer of the undertaking or part of it –
  - (a) may be effected by a series of two or more transactions, and
  - (b) may take place whether or not any property is transferred by the States to the transferee.

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## NOTES

*The Law is applied to the transfer of the undertaking or any part of the undertaking of the States Electricity Board in all respects as it applies to the transfer of the undertaking or any part of the undertaking of the States Telecommunications Board by the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001.*

*The Law is applied to the transfer of the undertaking or any part of the undertaking of the States Post Office Board in all respects as it applies to the transfer of the undertaking or any part of the undertaking of the States Telecommunications Board by the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001.*

*The Law is applied to the transfer of the undertaking or any part of the undertaking of Information Systems and Services in all respects as it applies to the transfer of the undertaking or any part of the undertaking of the States Telecommunications Board by the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the reference in this section to the States Telecommunications Board shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the reference in this section to the States Telecommunications Board shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the reference in this section to the States Telecommunications Board shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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### **Effect of transfer on contracts of employment, etc.**

2. (1) Except where objection is made under subsection (5), the transfer of the undertaking or any part thereof shall not operate so as to terminate the contract of employment of any person employed by the States in the undertaking or in the part transferred; and any such contract which would otherwise have been terminated by the transfer shall have effect after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to subsection (1), but subject to subsection (5), on the completion of a transfer of the undertaking or any part thereof –

- (a) all the States' rights, powers, duties and liabilities under or in connection with any contract of employment described in subsection (1) shall be transferred by virtue of this Law to the transferee, and
- (b) anything done before the transfer is completed by or in relation to the States in respect of that contract or a person employed in the undertaking or part thereof transferred shall be deemed to have been done by or in relation to the transferee.

(3) Any reference in subsection (1) or (2) to a person employed in the undertaking or part thereof transferred is a reference to a person so employed immediately before the transfer including, where the transfer is effected by a series of two or more transactions, a person so employed immediately before any of those transactions.

(4) Subsection (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(5) Subsections (1) and (2) shall not operate to transfer an employee's contract of employment and the rights, powers, duties and liabilities under or in connection with it if he informs the States or the transferee in writing that he objects to being employed by the transferee.

(6) Where an employee so objects, the transfer of the undertaking or the part thereof in which he is employed shall operate so as to terminate his contract of employment with the States; but he shall not be treated for any purpose as having been dismissed by the States.

(7) Subsections (1) and (5) are without prejudice to any right of an employee arising apart from this Law to terminate his contract of employment without notice if a substantial change is made in his working conditions to his detriment; but no such right shall arise by reason only that, under those subsections, the identity of the employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

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## **NOTES**

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the*

*undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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### **Effect of transfer on collective agreements.**

3. Where at the time of a transfer of the undertaking or any part thereof there exists a collective agreement made by or on behalf of the States with a trade union recognised by the States in respect of any employee whose contract of employment is preserved by section 2(1), then –

- (a) that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if made by or on behalf of the transferee with that trade union; and accordingly anything done under or in connection with it in its application as aforesaid by or in relation to the States before the transfer shall, after the transfer, be deemed to have been done by or in relation to the transferee, and
- (b) any order made in respect of that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if the transferee were a party to the agreement.

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**NOTES**

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the reference in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the reference in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the reference in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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**Non-application of sections 2 and 3 to public servants' pension scheme.**

4. (1) Sections 2 and 3 shall not apply –
- (a) to so much of a contract of employment or collective agreement as relates to the public servants' pension scheme, or
  - (b) to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue of any such agreement and relating to the public servants' pension scheme or otherwise arising in connection with a person's employment and relating to that scheme.



(2) For the avoidance of doubt, the provisions of subsection (1) are without prejudice to the rules of the public servants' pension scheme and to such rights to benefits as persons may have thereunder in respect of service completed prior to a transfer of the undertaking or any part thereof.

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## NOTES

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the reference in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the reference in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the reference in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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## **Obligations of transferee as to pension arrangements.**

5. (1) Upon a transfer of the undertaking or any part thereof the transferee shall, in respect of any person –

- (a) who, immediately before the transfer, was employed in the undertaking or the part transferred, and
- (b) whose contract of employment, immediately after the transfer, has effect by virtue of the provisions of section 2 as if originally made between him and the transferee,

make arrangements for the provision to or in respect of him of benefits under an occupational pension scheme, being arrangements broadly comparable to those provided to or in respect of him under the public servants' pension scheme immediately before the transfer.

(2) A transferee who fails, in respect of any person, to make arrangements which comply with the provisions of subsection (1) shall, subject to the provisions of subsection (6), be under an obligation to compensate that person for any overall material detriment suffered by him, in terms of his future accrual of benefits during any relevant period of employment, as a result of the failure to make such arrangements; and –

- (a) that obligation shall be enforceable by the employee against the transferee as a civil debt,
- (b) the transferee shall be under no other obligation to the employee in respect of that failure, and
- (c) compensation under this subsection –
  - (i) shall be determined in accordance with the provisions of subsections (3), (4) and (5),
  - (ii) shall be calculated as at a time immediately after the date of the transfer, and
  - (iii) may, without limitation, take the form of additional remuneration in respect of any relevant period of employment of an amount necessary to compensate the employee, in

respect of that period, for the overall material detriment suffered by him as mentioned in this subsection.

(3) Within a period of 28 days beginning on the date of a transfer of the undertaking or any part thereof, any person of a description set out in subsection (1) may make a written request to the [Committee] for the determination, by the actuary appointed by the [Committee] for the purposes of the public servants' pension scheme and at the expense of the States, of the following questions –

- (a) whether the transferee has, in respect of that person, made arrangements which comply with the provisions of subsection (1), and
- (b) if not, the amount required to compensate that person for any overall material detriment suffered by him as mentioned in subsection (2),

and the determination of the said actuary of those questions shall, subject to subsection (4), be final.

(4) Where under the provisions of subsection (3) the actuary appointed by the [Committee] for the purposes of the public servants' pension scheme has, in respect of any person, determined either of the questions mentioned in that subsection, the transferee or that person may, if aggrieved by the actuary's determination, within a period of 28 days beginning on the date of the determination, refer that question to arbitration; and for the purposes of this subsection –

- (a) the Arbitration (Guernsey) Law, 1982, as amended<sup>c</sup>,

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<sup>c</sup> Ordres en Conseil Vol. XXVII, p. 525; and Vol. XXIX, p. 178.

shall apply to any such arbitration, and

- (b) for the purposes of that Law –
  - (i) the transferee and that person shall be deemed to have entered into an arbitration agreement within the meaning of that Law, and
  - (ii) the arbitration agreement shall be deemed to provide that the reference shall be to a single arbitrator.

(5) In determining the questions mentioned in subsection (3) the actuary appointed by the [Committee] for the purposes of the public servants' pension scheme or, as the case may be, the arbitrator appointed pursuant to subsection (4) may have regard so far as applicable to the principles for the time being set out in paragraphs 13 to 15 of Annex A to the Statement of Practice issued by the Cabinet Office and entitled "Staff Transfers in the Public Sector"<sup>d</sup> as construed with the other provisions of that Statement; and in any legal proceedings a certificate of the said actuary or, as the case may be, the said arbitrator as to his determination of those questions shall be admissible in evidence as prima facie evidence of the matters stated therein.

(6) Where a person does not make a written request to the [Committee] in accordance with the provisions of subsection (3), the transferee shall be under no obligation to compensate him as mentioned in subsection (2).

(7) The provisions of this section are without prejudice to any provision in a contract imposing obligations on a transferee.

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<sup>d</sup> Cabinet Office Statement of Practice; January 2000 edition.

(8) The States may by Ordinance amend the provisions of this section.

[(9) Subject to subsection (10), the States may by resolution (referred to in this section as "**the original resolution**") defer the obligations of a transferee arising under, and the rights of any person exercisable by virtue of, this section upon a transfer of the undertaking or any part thereof, until such date, being a date within the period expiring upon the first anniversary of any such transfer, as is specified under the original resolution (referred to in this section as "**the specified date**").

(10) A deferment under subsection (9) shall cease to be effective before the specified date –

- (a) when, in a case where the undertaking or any part thereof has been transferred to a States trading company, that company ceases to be a States trading company, or
- (b) if the States, by resolution, so resolve.

(11) When a deferment under subsection (9) ceases to be effective –

- (a) the obligations referred to in that subsection shall apply to a transferee in respect of any person employed in the undertaking or the part transferred who was, immediately before the cessation, a member of the public servants' pension scheme by virtue of subsection (12), and

- (b) the rights referred to in subsection (9) may be exercised,

in the same manner as if the transfer of the undertaking or part thereof had occurred upon the cessation; and the provisions of this section shall apply accordingly.

- (12) Whilst a deferment under subsection (9) is effective, a person

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- (a) of a description referred to in section 5(1), or
- (b) who is employed in the undertaking or the part transferred after the transfer,

shall, for so long as he continues to be employed in the undertaking or the part transferred, for the purposes specified in subsection (13), be deemed to have a contract of employment with the States.

- (13) The purposes referred to in subsection (12) are those purposes relating solely to membership, continued membership and the acquisition of membership of the public servants' pension scheme and no other purposes.]

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## NOTES

*In section 5,*

*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 1, with effect from 1st May, 2016;*

*subsection (9), subsection (10), subsection (11), subsection (12) and subsection (13) were inserted by the Transfer of States Undertakings (Protection of Employment) (Amendment) Ordinance, 2001, section 1, Schedule, with effect from 1st October, 2001.*

*In its application to the transfer of the undertaking or any part of the undertaking of Information Systems and Services, section 5 is modified in accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 2, with effect from 22nd July, 2019.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.*

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**Dismissal of employee because of transfer of undertaking.**

6. (1) Where, either before or after the transfer of the undertaking or any part thereof, any employee of the States or transferee is dismissed, the dismissal of the employee shall be regarded for the purposes of Part II of the Employment Protection (Guernsey) Law, 1998<sup>e</sup> as having been unfair if the reason for the dismissal (or, if more than one, the principal reason) was the transfer or a reason connected with it; and the provisions of that Law shall apply accordingly.

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<sup>e</sup> Order in Council No. IX of 1998.

- (2) The provisions of this section apply –
- (a) whether or not the employee in question is employed in the undertaking or part thereof transferred or to be transferred,
  - (b) subject to the provisions of the Employment Protection (Guernsey) Law, 1998.

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## NOTES

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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## **Effect of transfer on union recognition.**

7. (1) This section applies where, after a transfer of the undertaking or any part thereof, the undertaking or the part transferred maintains an identity distinct from the remainder of the transferee's undertaking.



(2) Where, before such a transfer, an independent trade union is recognised to any extent by the States in respect of employees of any description who in consequence of the transfer become employees of the transferee, then, after the transfer –

- (a) the union shall be deemed to have been recognised by the transferee to the same extent in respect of employees of that description so employed, and
- (b) any agreement for recognition may be varied or rescinded accordingly.

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## NOTES

*In its application to the transfer of the undertaking or any part of the undertaking of the States Electricity Board, section 7 is modified in accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 2, with effect from 1st October, 2001.*

*In its application to the transfer of the undertaking or any part of the undertaking of the States Post Office Board, section 7 is modified in accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 2, with effect from 1st October, 2001.*

*In its application to the transfer of the undertaking or any part of the undertaking of Information Systems and Services, section 7 is modified in accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 3, with effect from 22nd July, 2019.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the*

*undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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### **Restriction on contracting out.**

8. Any provision of any agreement (whether a contract of employment or not) shall be void in so far as it purports to exclude or limit the operation of section 2, 5 or 6.

### **Interpretation.**

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

"**benefits**" includes benefits in the form of pensions or otherwise payable on termination of service or on death or retirement,

"**[Committee]**" means the States of Guernsey [Policy & Resources Committee],

"**Cabinet Office**" means the Cabinet Office of Her Majesty's Government,

"**collective agreement**" means any agreement or arrangement made by or on behalf of a trade union and an employer or employers' association and relating to any of the following matters –

- (a) terms and conditions of employment, or the physical conditions in which employees are required to work,

- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of any employee,
- (c) allocation of work or the duties of employment as between employees or groups of employees,
- (d) matters of discipline,
- (e) the membership or non-membership of trade unions on the part of an employee,
- (f) facilities for officials of trade unions, and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of any such procedures,

**"collective bargaining"** means negotiations relating to or connected with any of the matters specified in the definition of the expression **"collective agreement"**,

**"committee of the States"** means any committee, council, board or authority of the States constituted by resolution or law approved by the States,

**"contract of employment"** means any agreement, whether express or implied and whether written or oral, between an employee and his employer

determining the terms and conditions of his employment,

**"employee"** means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services, and cognate expressions shall be construed accordingly,

**"employers' association"** has the meaning given by section 34 of the Employment Protection (Guernsey) Law, 1998,

**"independent trade union"** has the meaning given by section 34 of the Employment Protection (Guernsey) Law, 1998,

**"occupational pension scheme"** means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category,

**"prescribed"** means prescribed by Ordinance of the States under this Law, and cognate expressions shall be construed accordingly,

**"public servants' pension scheme"** means the scheme of that name established and maintained under the States of Guernsey (Public Servants) (Pensions and other Benefits) Rules, 1972 to 1999 as from time to time amended, re-enacted (with or without modification), extended or applied,

**"recognised"**, in relation to a trade union, means recognised to any extent by an employer, or two or more associated employers (within the

meaning of section 34 of the Employment Protection (Guernsey) Law, 1998),  
for the purpose of collective bargaining,

**"relevant period of employment"** in relation to an employee means a period of continuous employment with the transferee beginning on the date of the transfer,

**"States"** means the States of Guernsey,

**"trade union"** has the meaning given by section 34 of the Employment Protection (Guernsey) Law, 1998,

**"transfer"** means a transfer to which, pursuant to section 1, this Law applies, and **"transferee"** shall be construed accordingly,

**"undertaking"** means the undertaking of the States Telecommunications Board and includes any trade or business of, and any department or operation conducted by, the said Board,

**"working conditions"** includes terms and conditions of employment and physical working conditions.

(2) Any reference in this Law to an enactment is a reference thereto as amended, re-enacted (with or without modification), extended or applied.

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## NOTES

*In section 9, the words in the first and second pairs of square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 1 and section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.<sup>1</sup>*

*The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>2</sup>*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Electricity Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1, with effect from 1st October, 2001, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to the States Post Office Board or (as the case may be) to the undertaking or any part of the undertaking thereof.*

*In accordance with the provisions of the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019, section 1, with effect from 22nd July, 2019, the references in this section to the undertaking (the States Telecommunications Board) shall be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.*

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### **Power to extend Law to transfers of other States undertakings.**

**10.** The States may by Ordinance provide that the provisions of this Law shall apply, subject to such exceptions, adaptations and modifications as may be prescribed, to the transfer of the undertaking or any part of the undertaking of any prescribed committee of the States other than the States Telecommunications Board.

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#### **NOTE**

*The following Ordinances have been made under section 10:*

*Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001;*

*Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001;*

*Transfer of States Undertakings (Protection of Employment)*

*(Information Systems and Services) Ordinance, 2019.*

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**Application of Right to Work Law.**

11. ...

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**NOTE**

*Section 11 was repealed by the Population Management (Guernsey) Law, 2016, section 85, Schedule 3, with effect from 3rd April, 2017, subject to the transitional and saving provisions in Part 4 of the 2017 Law.<sup>3</sup>*

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**Amendment of Employment Protection Law.**

12. In section 13(2) of the Employment Protection (Guernsey) Law, 1998<sup>g</sup>, after the expression "(read with section 12(2) and (3))" insert "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)".

**General provisions as to Ordinances.**

13. (1) An Ordinance of the States under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder,
  - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient including (in the case of an Ordinance under section 5) provision amending this Law.

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<sup>g</sup> Order in Council No. IX of 1998.

(2) Any power conferred by this Law to make an Ordinance 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 prescribed conditions.

**Citation.**

**14.** This Law may be cited as the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001.

**Commencement.**

**15.** This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.



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**NOTE**

*The Law was brought into force on 1st October, 2001 by the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (Commencement) Ordinance, 2001, section 1.*

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<sup>1</sup> These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 12(a), with effect from 6th May, 2004.

<sup>2</sup> The functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Civil Service Board and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 12(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

<sup>3</sup> Prior to its repeal, certain references in this section were to be construed in accordance with the provisions of, first, the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001, section 1 and, second, the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001, section 1.