

ORDER IN COUNCIL

**I
2010**

ratifying a Projet de Loi

ENTITLED

The Minimum Wage (Guernsey) Law, 2009

(Registered on the Records of the Island of Guernsey
on the 1st March, 2010.)



2010

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

1st day of March, 2010 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Michael John Tanguy, Esquires, Susan Mowbray, The Reverend Peter Gerald Lane, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire, Constance Helyar-Wilkinson and Terry George Snell, Esquire, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 10th February 2010 approving and ratifying a Projet de Loi entitled “The Minimum Wage (Guernsey) Law, 2009”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED that the said Order in Council be registered on the records of this Island.



At the Court at Buckingham Palace

THE 10th DAY OF FEBRUARY 2010

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 1st November 2007, the States of Deliberation at a meeting on 25th March 2009 approved a *Projet de Loi* entitled the Minimum Wage (Guernsey) Law, 2009 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Minimum Wage (Guernsey) Law, 2009, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

PROJET DE LOI

ENTITLED

The Minimum Wage (Guernsey) Law, 2009

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PROJET DE LOI

ENTITLED

The Minimum Wage (Guernsey) Law, 2009

THE STATES, in pursuance of their Resolution of the 1st day of November 2007^a, 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

ENTITLEMENT TO MINIMUM WAGE

Workers to be paid at least minimum wage.

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

(2) A person qualifies for the minimum wage if he –

- (a) is a worker,
- (b) is working, or ordinarily works, in Guernsey under his contract, and
- (c) has ceased to be of compulsory school age.

^a Article IX of Billet d'État No. XXII of 2007.

(3) The minimum wage shall be such single hourly rate as the Department may from time to time prescribe by regulations.

(4) For the purposes of this Law a "**pay reference period**" is such period as the Department may prescribe by regulations for the purpose.

(5) In this Law, "**compulsory school age**" has the same meaning as in the Education (Guernsey) Law, 1970, as amended^b.

(6) Subsections (1) to (3) are subject to the following provisions of this Law.

Determination of hourly rate of remuneration.

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

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

^b Ordres en Conseil Vol. XXII, p. 318; amended by the Supplementary Family Allowances (Guernsey) Law, 1976 (No. IV of 1976); the Education (Amendment) (Guernsey) Law, 1981 (No. X of 1981); the Education (Amendment) (Guernsey) Law, 1983 (No. VII of 1983); the Education (Amendment) (Guernsey) Law, 1987 (No. XIII of 1987); the Education (Amendment) (Guernsey) Law, 1988 (No. XV of 1988); the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (No. V of 1989); the Education (Amendment) (Guernsey) Law, 1990 (No. XV of 1990); and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (Ordinance No. XXXIII of 2003).

- (a) the remuneration, to the extent that it is at a periodic rate, is at a single rate,
 - (b) the remuneration is, in whole or in part, at different rates applicable at different times or in different circumstances,
 - (c) the remuneration is, in whole or in part, otherwise than at a periodic rate or rates, and
 - (d) the remuneration consists, in whole or in part, of benefits in kind.
- (3) The regulations may make provision with respect to –
 - (a) circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated, and
 - (b) the treatment of periods of paid or unpaid absence from, or lack of, work and of remuneration in respect of such periods.
- (4) Any regulations made under subsection (3)(a) may include provision in connection with –
 - (a) treating a person as, or as not, working for a maximum or minimum time, or for a proportion of the time, in

any period, and

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

(5) Subject to subsection (6), the regulations may make provision with respect to –

- (a) what is to be treated as, or as not, forming part of a person's remuneration, and the extent to which it is to be so treated,
- (b) the valuation of benefits in kind,
- (c) the treatment of deductions from earnings, and
- (d) the treatment of any charges or expenses which a person is required to bear.

(6) In regulations made under this section, no benefits in kind shall be treated as forming part of a person's remuneration apart from accommodation and food provided to the person by his employer as part of his employment contract; and such regulations shall further provide that if food is provided to a person by his employer as part of his employment contract and he chooses not to accept it, then the provision of that food shall not be treated as forming a part of his remuneration.

(7) The regulations may make provision with respect to –

- (a) the attribution to a period, or the apportionment

between two or more periods, of the whole or any part of any remuneration or work, whether or not the remuneration is received or the work is done within the period or periods in question,

- (b) the aggregation of the whole or any part of the remuneration for different periods, and
- (c) the time at which remuneration is to be treated as received or accruing.

(8) Subsections (2) to (7) are without prejudice to the generality of subsection (1).

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

- (a) different areas,
- (b) different sectors of employment,
- (c) undertakings of different sizes,
- (d) persons of different ages, or
- (e) persons of different occupations.

Young Persons' Minimum Wage Rate.

3. (1) The Department may by regulations make provision in relation to persons of or below the age of 18, by prescribing an hourly rate for the

minimum wage other than the single hourly rate for the time being prescribed under section 1(3), which shall be referred to as the Young Persons' Minimum Wage Rate.

(2) The Department may by regulations change the age at which persons qualify for the minimum wage at the single hourly rate for the time being prescribed under section 1(3).

(3) References in this Law (however expressed) to the minimum wage, or to the rate of the minimum wage, include references, where appropriate, to the minimum wage at the Young Persons' Minimum Wage Rate.

Apprentices.

4. (1) Regulations under section 3(1) may prevent persons of or below the age of 18 who are apprentices from qualifying for the Young Persons' Minimum Wage Rate.

(2) The Department may by regulations prevent apprentices above the age of 18 from qualifying for the minimum wage for the first twelve months of their apprenticeships.

PART II

SETTING AND AMENDING THE MINIMUM WAGE AND THE YOUNG PERSONS' MINIMUM WAGE RATE

Duty to consult.

5. (1) Before making regulations under section 1(3), 2(1), 3(1) or 3(2), the Department shall consult such organizations, or associations of organizations, representative of employers and employees in Guernsey, and such other organizations and bodies, as appear to the Department to be appropriate.

(2) For the avoidance of doubt, the effectiveness for the purposes of subsection (1) of any consultation undertaken by the Department before this section comes into force shall not be affected by the fact that this section was not in force.

Factors to be taken into account.

6. Before making regulations under section 1(3), 2(1) or 3(1), the Department shall consider and take into account –

- (a) the current rate of the minimum wage in the United Kingdom, the Isle of Man and Jersey,
- (b) the current economic and trading conditions prevailing in Guernsey,
- (c) the rate of inflation in Guernsey,
- (d) the rate of unemployment in Guernsey,
- (e) current rates of pay in Guernsey,
- (f) the increase or decrease in rates of pay in Guernsey over the previous twelve months,

and such other factors as appear to it to be relevant.

PART III ENFORCEMENT

Duty on employer to keep records.

7. (1) The employer of a worker who qualifies for the minimum wage shall keep in respect of that worker records sufficient to establish that he is remunerating the worker at a rate at least equal to the minimum wage.

(2) The records required to be kept under subsection (1) –

- (a) shall be in a form which enables the information kept about a worker in respect of a pay reference period to be produced in a single document,
- (b) shall be kept by the employer for a period of three years beginning with the day upon which the pay reference period immediately following that to which they relate ends, and
- (c) may be kept by means of a computer.

Worker's right of access to records.

8. (1) A worker may, in accordance with the following provisions of this section –

- (a) require his employer to produce any relevant records, and
- (b) inspect and examine those records and copy any part of them.

(2) The rights conferred by subsection (1) are exercisable –

- (a) only if the worker believes on reasonable grounds that he is or may be being, or has or may have been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage,
- (b) only for the purpose of establishing whether or not the worker is being, or has been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage, and
- (c) only if the worker gives a written notice (a "**production notice**") to his employer requesting the production of any relevant records relating to such period as may be described in the notice.

(3) The rights conferred by subsection (1) are exercisable -

- (a) by the worker alone, or
- (b) by the worker accompanied by such other person as the worker may think fit.

(4) If the worker intends to exercise the right conferred by subsection (3)(b), the production notice must contain a statement of that intention.

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

(6) The place at which the relevant records are produced must be

-

(a) the worker's place of work, or

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

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

(7) The relevant records must be produced -

(a) before the end of the period of fourteen days following the date of receipt of the production notice, or

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

(8) In this section -

"records" means records which the worker's employer is required to keep and, at the time of receipt of the production notice, preserve in accordance with section 7, and

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

Failure of employer to allow access to records.

9. (1) A complaint may be presented to the Employment and Discrimination Tribunal ("**the Tribunal**") by a worker on the ground that the employer -

- (a) failed to produce some or all of the relevant records in accordance with section 8(6) or (7), or
- (b) failed to allow the worker to exercise some or all of the rights conferred by section 8(1)(b) or (3)(b).

(2) Where the Tribunal finds a complaint under this section well-founded, it shall -

- (a) make a declaration to that effect, and
- (b) make an award that the employer pay to the worker a sum equal to 80 times the hourly amount of the minimum wage (as in force when the award is made).

(3) The Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal before the expiry of the period of three months following -

- (a) the end of the period of fourteen days mentioned in section 8(7)(a), or
- (b) in a case where a later day was agreed under paragraph section 8(7)(b), that later day.

(4) Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the expiry of the period of three months mentioned in subsection (3), the Tribunal may consider the complaint if it is presented within such further period as it considers reasonable.

Non-compliance: worker entitled to additional remuneration.

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

(2) That amount is the difference between –

- (a) the relevant remuneration received by the worker for the pay reference period, and
- (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the rate of minimum wage which was payable in respect of the worker during that period.

(3) For the avoidance of doubt, and without prejudice to any other remedy which may be open to him, where a worker qualifies for the minimum

wage and is remunerated by his employer at a rate which is less than the minimum wage contrary to section 1(1) –

- (a) he (or in the circumstances described in section 15, an officer acting on his behalf) may present a complaint against his employer to the Tribunal under section 16(1)(d) of the Employment Protection (Guernsey) Law, 1998 as amended^c ("**the 1998 Law**"); or
- (b) he may seek to enforce the entitlement under his contract conferred by subsection (1) to be paid the amount described in subsection (2) by commencing proceedings against his employer for the recovery of the debt in the Magistrate's Court or the Ordinary Court (as the case may be) ("**the appropriate court**").

Proceedings described in paragraphs (a) and (b) are subject to section 30C of the 1998 Law ("Minimum wage decisions to be binding").

(4) In subsection (2), "**relevant remuneration**" means remuneration which falls to be brought into account for the purposes of regulations under sections 2 and 3.

^c Order in Council No. IX of 1998; amended by No. XVIII of 2001; No. VIII of 2002; No. I of 2006; and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (Recueil d'Ordonnances Tome XXX, p. 627). Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

Court may stay minimum wage proceedings for conciliation.

11. (1) The appropriate court may, at any time, stay proceedings described in section 10(3)(b) for a period of six weeks and refer the parties to the Department, which shall use its best endeavours to settle the action by giving such advice and assistance as it thinks necessary, or by conciliation.

(2) Either party may, by way of written representations endorsed by the Department, apply to the appropriate court for an extension of a stay of the action granted under subsection (1) if, in the opinion of that party and the Department, conciliation and negotiation are in progress with a view to settlement.

Sums awarded by Court in minimum wage proceedings to be recoverable as preferred debts.

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

- (a) a sum awarded by the appropriate court in proceedings under section 10(3)(b) 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

^d Ordres en Conseil Vol. XXVIII, p. 184; amended by No. VII of 1992; No. III of 1993; No. IX of 1998; No. XIV of 2008; and Ordinances XXXI of 2005 and XXIII of 2006.

of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 or under sections 15K, 21, 24 or 24A of the 1998 Law,

and shall be paid in full, unless the assets are insufficient, in which case the award made in proceedings under section 10(3)(b) 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 made in proceedings under section 10(3)(b) 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 made in proceedings under section 10(3)(b) 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.

Powers of officers.

- 13. (1) The Department may appoint officers to act for the purposes of this Law.

(2) When acting for the purposes of this Law, an officer shall, if so required, produce some duly authenticated document showing his authority so to act.

(3) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of this Law does not know that he is an officer so acting, the officer shall identify himself as such to that person.

(4) Where an officer acting for the purposes of this Law -

- (a) is of the opinion described in section 14(1),
- (b) believes that an employer is in breach of section 7(1),
or
- (c) believes that an employer has acted in a way described in section 9(1) in relation to a worker,

he shall have power for the performance of his duties -

- (i) to require the production by a relevant person of any records required to be kept and preserved in accordance with section 7,
- (ii) to inspect and examine those records and to copy any material part of them,
- (iii) to require a relevant person to furnish to him (either alone or in the presence of any other

person, as the officer thinks fit) an explanation of them, and

- (iv) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Law, or any enforcement notice under section 14, is being or has been complied with.

(5) An officer acting for the purposes of this Law shall have power for the performance of his duties at all reasonable times to enter any relevant premises in order to exercise any power conferred on the officer by subsection (4).

(6) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in criminal proceedings except –

- (a) in proceedings for an offence under section 21(5) or (6), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(7) A statement may not be used by virtue of subsection (6) against a person unless –

- (a) evidence relating to it is adduced, or

- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

(8) The powers conferred by subsections (4) and (5) include power, on reasonable written notice, to require a relevant person -

- (a) to produce any such records as are mentioned in subsection (4)(i) to an officer at such time and place as may be specified in the notice, or
- (b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in subsections (4)(iii) and (iv).

(9) In this section "**relevant person**" means any person whom an officer acting for the purposes of this Law has reasonable cause to believe to be -

- (a) the employer of a worker,
- (b) a person who for the purposes of section 26 is the agent or the principal,
- (c) a person who supplies work to an individual who qualifies for the minimum wage,
- (d) a worker, servant or agent of a person falling within paragraph (a), (b) or (c), or

- (e) a person who qualifies for the minimum wage.

(10) In this section "**relevant premises**" means any premises which an officer acting for the purposes of this Law has reasonable cause to believe to be —

- (a) premises at which an employer carries on business,
- (b) premises which an employer uses in connection with his business (including any place used, in connection with that business, for giving out work to home workers, within the meaning of section 27), or
- (c) premises of a person who for the purposes of section 26 is the agent or the principal.

Power of officer to issue enforcement notice.

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

(2) An enforcement notice may also require the employer to pay to the worker within such time as may be specified in the notice the sum due to the worker under section 10 in respect of the employer's previous failure to remunerate the worker at a rate at least equal to the minimum wage.

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

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

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

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

- (a) that, in the case of the worker or workers to whom the enforcement notice relates, the facts are such that an officer who was aware of them would have had no reason to serve any enforcement notice on the appellant,
- (b) where the enforcement notice relates to 2 or more workers, that the facts are such that an officer who was aware of them would have had no reason to include some of the workers in any enforcement notice served on the appellant, or
- (c) where the enforcement notice imposes a requirement under subsection (2) in relation to a worker –

- (i) that no sum was due to the worker under section 10, or
- (ii) that the amount specified in the notice as the sum due to the worker under that section is incorrect,

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

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

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

- (a) the Tribunal shall rectify the enforcement notice, and
- (b) the enforcement notice shall have effect as if it had originally been served as so rectified.

(9) The powers of the Tribunal in allowing an appeal in a case where subsection (8) applies shall include power to rectify, as the Tribunal may consider appropriate in consequence of its decision on the appeal, any penalty notice which has been served under an Ordinance made under section 16 in respect of the enforcement notice.

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

Non-compliance: power of officer to make complaint to Tribunal on behalf of worker.

15. (1) If an enforcement notice is not complied with in whole or in part, an officer acting for the purposes of this Law may, on behalf of any worker to whom the notice relates, and on receipt of a written request to do so, make a complaint under section 16(1)(d) of the 1998 Law to the Tribunal.

(2) The powers conferred by subsection (1) on an officer acting for the purposes of this Law shall not be in derogation of any right which the worker has to make a complaint himself under section 16(1)(d) of the 1998 Law, nor of any right that the worker has to commence other civil proceedings for the recovery, on a claim in contract, of any sums due to him by virtue of section 10 of this Law; but in the event of a worker making such a complaint or taking such proceedings, the officer shall immediately discontinue any complaint made to the Tribunal by the officer on behalf of the worker under subsection (1).

Power to make Ordinances providing for financial penalties for non-compliance.

16. (1) The States may by Ordinance make such provision as they think fit to provide for the service of a notice requiring the payment of a financial penalty (a "**penalty notice**") on a person on whom an enforcement notice has been served, where an officer acting for the purposes of this Law is satisfied that the person has failed in whole or in part to comply with that enforcement notice.

(2) An Ordinance under subsection (1) may, without limitation, make provision in relation to the following matters:

- (a) information that must be stated on penalty notices,
- (b) the method of calculation of financial penalties,

- (c) the recovery of financial penalties, and
- (d) appeals against penalty notices.

Right not to suffer a detriment.

17. (1) A 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 -

- (a) any action was taken, or was proposed to be taken, by or on behalf of the worker with a view to enforcing, or otherwise securing the benefit of, a right of that worker to which this section applies, or
 - (b) the employer was prosecuted for an offence under section 21, whether or not as a result of action taken by or on behalf of the worker for the purpose of enforcing, or otherwise securing the benefit of, a right of that worker to which this section applies, or
 - (c) the worker qualifies, or will or might qualify, for the minimum wage.
- (2) It is immaterial for the purposes of subsection (1)(a) or (b) -
- (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,

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

- (3) The following are the rights to which this section applies -
 - (a) any right conferred by, or by virtue of, any provision of this Law for which the remedy for its infringement is by way of a complaint to the Tribunal, and
 - (b) any right conferred by section 10.

Enforcement of the right.

18. A worker may present a complaint to the Tribunal that he has been subjected to a detriment in contravention of section 17 under section 16(1)(c) of the 1998 Law.

Restrictions on contracting out, and compromise agreements.

19. The provisions of section 30A of the 1998 Law shall apply in relation to the provisions of this Law, and to proceedings under this Law before the Tribunal, as they apply in relation to the provisions of the 1998 Law, and to proceedings under that Law before the Tribunal.

Evidential burden.

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

(2) Where in any civil proceedings a person seeks to recover the amount described in section 10(2), it shall be presumed for the purposes of the

proceedings, so far as relating to that amount, that the individual in question was remunerated at a rate less than the minimum wage unless the contrary is established.

Offences.

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

(2) If a person who is required to keep or preserve any record in accordance with section 7 fails to do so, that person is guilty of an offence.

(3) If a person makes, or knowingly causes or allows to be made, in a record required to be kept in accordance with section 7 any entry which he knows, or has reasonable cause to believe, to be false, deceptive or misleading in a material particular, that person is guilty of an offence.

(4) If a person recklessly makes an entry, dishonestly or otherwise, which is false, deceptive or misleading in a material particular, in a record required to be kept in accordance with section 7, that person is guilty of an offence.

(5) If a person, for purposes connected with the provisions of this Law, produces or furnishes, or knowingly causes or allows to be produced or furnished, any record or information which he knows, or has reasonable cause to believe, to be false, deceptive or misleading in a material particular, that person is guilty of an offence.

(6) If a person -

- (a) intentionally delays or obstructs an officer acting for the purposes of this Law in the exercise of any power conferred by this Law, or
- (b) refuses or neglects to answer any question, furnish any information or produce any document when required to do so under section 13(4),

that person is guilty of an offence.

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

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

(9) In any proceedings for an offence under subsection (1) or (2) it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this Law, and of any relevant regulations made under it, were complied with by himself and by any person under his control.

(10) Subject to subsection (11), a person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(11) A person guilty of an offence under subsection (3) or (4) shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale, or to a term of imprisonment not exceeding three months, or to both.

Offences by bodies corporate etc.

22. (1) This section applies to any offence under this Law.

(2) If an offence committed by a body corporate is proved -

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In subsection (2) "**officer**", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in such a capacity,

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(6) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

PART IV

EXCLUSIONS AND SPECIAL CLASSES OF PERSON

Share fishermen.

23. A person -

- (a) employed as master, or as a member of the crew, of a fishing vessel, and
- (b) remunerated, in respect of that employment, only by a share in the profits or gross earnings of the vessel,

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

Voluntary workers.

24. (1) A worker employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body does not qualify for the minimum wage in respect of that employment if he receives, and under the terms of his employment (apart from this Law) is entitled to -

(a) no monetary payments of any description, or no monetary payments except in respect of expenses -

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

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

(b) no benefits in kind of any description, or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment.

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

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

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

(3) For the purposes of subsection (1)(b) -

- (a) any training (other than that which a person necessarily acquires in the course of doing his work) shall be taken to be a benefit in kind; but
- (b) there shall be left out of account any training provided for the sole or main purpose of improving the worker's ability to perform the work which he has agreed to do.

(4) In this section -

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

"charity" means any organisation established for charitable purposes only;

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

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

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

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

Prisoners.

25. (1) A prisoner does not qualify for the minimum wage in respect of any work that he undertakes.

(2) In this section, "**prisoner**" means a person detained in, or on temporary release from, a prison.

Agency workers who are not otherwise "workers".

26. (1) This section applies in any case where an individual ("**the agency worker**") -

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

- (b) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

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

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

Home workers who are not otherwise "workers".

27. (1) In determining for the purposes of this Law whether a home worker is or is not a worker, the definition of "worker" in section 32 shall have effect as if for the word "personally" there were substituted "(whether personally or otherwise)".

(2) In this section, "**home worker**" means an individual who contracts with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person.

Application of Law to superior employers.

28. Where -

- (a) the immediate employer of a worker is himself in the employment of some other person, and
- (b) the worker is employed on the premises of that other person,

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

PART V

GENERAL PROVISIONS

Amendments to the 1993 Law.

29. In the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993 as amended^e, in the definition of "industrial dispute" -

- (a) in paragraph (a), delete "(a), (b) or (c)", after "for dismissal" delete "or" and insert ",", and after "section 15J of that Law" insert ", subjecting a worker

^e Order in Council No. I of 1993, as amended by No. IX of 1998; No. VIII of 2002; Ordinance No. XXXIII of 2003; and Ordinance No. XXXI of 2005.

to a detriment in contravention of section 17 of the Minimum Wage (Guernsey) Law, 2009, or a contravention of section 1(1) of that Law", and

- (b) immediately after paragraph (b) insert a new paragraph
- (c) –

"(c) a dispute under the Minimum Wage (Guernsey) Law, 2009."

Amendments to the 1998 Law.

30. The amendments to the 1998 Law set out in the Schedule shall have effect.

Regulations.

31. (1) Except to the extent that this Law makes provision to the contrary, any power conferred by this Law to make regulations includes the power -

- (a) to make different provision for different cases or for different descriptions of person, and
- (b) to make incidental, consequential, supplemental or transitional provision and savings.

(2) Subsection (1)(a) does not have effect in relation to regulations under section 1(3).

(3) Any regulations made under section 1(3), 3(1) or 3(2) shall not have effect unless and until approved by a resolution of the States.

Interpretation.

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

"**agent**" has the meaning given in section 26(1)(a);

"**agency worker**" has the meaning given in section 26(1);

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

"**appropriate court**" has the meaning given in section 10(3)(b);

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

"**contract of employment**" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"**Department**" means the States Commerce and Employment Department;

"**employer**", in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed (and see section 28);

"**employment**", in relation to a worker, means employment under his contract, and "**employed**" shall be construed accordingly;

"enactment" means any Law, Ordinance or subordinate legislation;

"enforcement notice" has the meaning given in section 14;

"Guernsey" includes the islands of Herm and Jethou;

"the 1998 Law" has the meaning given in section 10;

"officer" means an officer appointed by the Department under section 13;

"Ordinary Court" means the Royal Court sitting as an Ordinary Court;

"pay reference period" has the meaning given in section 1(4);

"principal" has the meaning given in section 26(1)(a);

"production notice" has the meaning given in section 8(2)(c);

"Tribunal" means the Employment and Discrimination Tribunal;

"uniform scale" means the scale of fines for offences set out in the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^f; and

^f Ordres en Conseil Vol. XXXI, p. 278; amended by Recueil d'Ordonnances Tome XXV, p. 344 and Ordinance No. XXII of 1998.

"**worker**" (except in the phrases "agency worker" and "home worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under) -

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual,

and any reference to a worker's contract shall be construed accordingly.

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

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

(4) The Interpretation (Guernsey) Law, 1948^g applies to the interpretation of this Law.

^g Ordres en Conseil Vol. XIII, p. 355.

Citation and commencement.

33. (1) This Law may be cited as the Minimum Wage (Guernsey) Law, 2009.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

K.H. TOUGH,
Her Majesty's Greffier.

Section 30

SCHEDULE

**AMENDMENTS TO THE EMPLOYMENT PROTECTION (GUERNSEY) LAW,
1998**

1. In section 12(4) of the 1998 Law, delete "." and insert "; or" at the end of paragraph (d), and immediately after paragraph (d) insert a new paragraph -

"(e) the Minimum Wage (Guernsey) Law, 2009
("the **2009 Law**")."

2. In section 16(1) of the 1998 Law -

(a) insert "or section 17 of the 2009 Law, or" at the end of section 16(1)(c), and

(b) immediately after section 16(1)(c), insert a new subparagraph -

"(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,".

3. In section 16(2) of the 1998 Law,

- (a) in subparagraph (a), delete "in the case of a complaint under section (1)(a) or (c)", and
- (b) in subparagraph (b), delete "in any case,", delete ", in the case of a complaint under subsection (1)(a) or (c)", and immediately after "members" insert ", and in the case of a complaint under subsection (1)(d), a Tribunal constituted by a single member,".

4. In section 17(1) of the 1998 Law, in subparagraph (a)(ii), immediately after "section 16(1)(c)" insert "or (d)", and in section 17(6) immediately after "section 16(1)" insert "(a) or (b)".

5. In section 19(1) of the 1998 Law, delete "(a) or (c)", in section 20(1) delete "paragraph (a) or (c) of", and in section 20(2) immediately after "three members" insert "or, subject to section 20A, in the case of a complaint under section 16(1)(d), one member".

6. Immediately after section 20 of the 1998 Law, insert a new section –

"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."

7. Immediately after section 24 of the 1998 Law, insert a new section –

"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."

8. In sections 29 and 30 of the 1998 Law, wherever "award under section 15K, 21 or 24" appear substitute "award under section 15K, 21, 24 or 24A".

9. In section 30B of the 1998 Law, for the marginal note substitute "Tribunal may join unfair dismissal, sex discrimination and minimum wage complaints", and in section 30B(a) for "or (c)" substitute ", (c) or (d)".

10. Immediately after section 30B of the 1998 Law, insert a new section

–

"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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