

# PROJET DE LOI

ENTITLED

## **The Conditions of Employment (Guernsey) Law, 1985 \***

*[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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\* Ordres en Conseil Vol. XXIX, p. 42; as amended by the Conditions of Employment (Amendment) (Guernsey) Law, 1992 (No. I of 1992, Ordres en Conseil Vol. XXXIV, p. 52); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996 (No. XXXI of 1996, Recueil d'Ordonnances Tome XXVII, p. 139); 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 Conditions of Employment (Amendment) Ordinance, 2010 (No. XXXIX of 2010); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. \*\* of 2017).

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## **The Conditions of Employment (Guernsey) Law, 1985**

### ARRANGEMENT OF SECTIONS

1. Written particulars of terms of employment.
2. Supplementary provisions relating to statements under section 1.
3. Certain hours of employment to be disregarded.
- 3A. Statements of pay.
4. Changes in terms of employment.
5. Exclusion of certain contracts in writing.
6. Employment outside this Island.
7. Mariners.
8. Employment of husband or wife.
9. Application of sections 1 to 4 to excluded employment.
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## **The Conditions of Employment (Guernsey) Law, 1985**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of June, 1984, 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 and Herm.

### **Written particulars of terms of employment.**

1. (1) Not later than four weeks after the beginning of an employee's period of employment with an employer or, where such employment has begun before the coming into force of this Law, then within four weeks after its coming into force, the employer shall give to the employee a written statement in accordance with the succeeding provisions of this section.

(2) An employer shall in a statement under this section –

- (a) identify the parties, and
- (b) specify the date when the employment began.

(3) A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given, that is to say –

- (a) the scale or rate of remuneration, or the method of calculating remuneration (including overtime rates, shift pay and other pecuniary benefits),
- (b) the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),

- (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
- (d) any terms and conditions relating to –
  - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
  - (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
  - (iii) pensions and pension schemes,
- (e) the length of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, and
- (f) the title of the job which the employee is employed to do[, and
- (g) any terms and conditions relating to maternity pay, maternity leave and the employee's right to return to her job after confinement.]

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**NOTE**

*In section 1, paragraph (g) of subsection (3), and the word immediately after paragraph (f) thereof, were inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 69, with effect from 1st March, 2006.*

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**Supplementary provisions relating to statements under section 1.**

2. (1) If there are no particulars to be entered under any of the paragraphs of subsection (3) of section 1 of this Law, or under any of the heads of paragraph (d) of the aforesaid subsection (3) of that section, that fact shall be stated.

(2) If the contract of employment is for a fixed term, the statement given under section 1 of this Law shall state the date when the contract expires.

(3) A statement given under section 1 of this Law may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his employment or which is made reasonably accessible to him in some other way.

**Certain hours of employment to be disregarded.**

3. No account shall be taken under section 1 of this Law of employment during any period when the hours of employment are normally less than [[zero hours] (or such other number of hours as the States may determine by Ordinance) per week].

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**NOTES**

*In section 3,*

*the words in square brackets were substituted by the Conditions of Employment (Amendment) (Guernsey) Law, 1992, section 1(a), with effect from 31st March, 1992;*

*the words in square brackets within the square brackets were substituted by the Conditions of Employment (Amendment) Ordinance, 2010, section 1, with effect from 1st October, 2010.*

*The following Ordinance has been made under section 3:*

*Conditions of Employment (Amendment) Ordinance, 2010.*

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**[Statements of pay.**

3A. (1) An employer who, pursuant to a contract of employment, is obliged to pay remuneration to an employee shall, on or before the day on which, pursuant to the contract, the remuneration is payable, give the employee a statement

(a "statement of pay") which conforms with subsections (2) and (3).

(2) The statement of pay shall specify –

- (a) the gross amount of remuneration which, pursuant to the contract, is payable to the employee on that day,
- (b) the amount of each deduction made therefrom,
- (c) the matters in respect of which each deduction is made,
- (d) the aggregate amount of all deductions,
- (e) the net amount of remuneration payable (being the difference between the amounts referred to in paragraphs (a) and (d)), and
- (f) the date on which the net amount of remuneration is to be paid.

(3) The statement of pay shall be written and legible.

(4) For the purposes of subsection (2)(a), the gross amount of an employee's remuneration includes payments for overtime, shift pay and any other pecuniary benefit payable pursuant to the contract of employment.]

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**NOTE**

*Section 3A was inserted by the Conditions of Employment (Amendment) (Guernsey) Law, 1992, section 1(b), with effect from 31st March, 1992.*

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**Changes in terms of employment.**

4. (1) If after the date to which a statement given under section 1 of this Law relates there is a change in the terms of employment to be included, or referred to, in that statement the employer shall not more than four weeks after the

change, inform the employee of the nature of the change by a written statement and, if he does not leave a copy of the statement with the employee, shall preserve the statement and ensure that the employee has reasonable opportunities of reading it in the course of his employment, or that it is made reasonably accessible to him in some other way.

(2) A statement given under subsection (1) of this section may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his employment, or which is made reasonably accessible to him in some other way.

(3) Where, after an employer has given to an employee a written statement in accordance with section 1 of this Law the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, and the change does not involve any change in the terms (other than the name of the employer) included or referred to in the statement, then, the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 1, but, the change shall be treated as a change falling within subsection (1) of this section.

**Exclusion of certain contracts in writing.**

5. Section 1 and 4 of this Law shall not apply to an employee if and so long as the following conditions are fulfilled in relation to him, that is to say –

- (a) the employee's contract of employment is a contract which has been reduced to writing in one or more documents and which contains express terms affording the particulars to be given under each of the paragraphs in subsections (2) and (3) of section 1 of this Law, and under each head of paragraph (d) of the aforesaid subsection (3) of that section, and
- (b) there has been given to the employee a copy of the contract (with any variations made from time to time),

or he has reasonable opportunities of reading such copy in the course of his employment, or such a copy is made reasonably accessible to him in some other way:

Provided that if at any time after the beginning of an employee's period of employment these conditions cease to be fulfilled in relation to him, the employer shall give the employee a written statement under section 1 of this Law not more than four weeks after that time.

**Employment outside this Island.**

6. Sections 1 to 4 of this Law do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside this Island unless the employee ordinarily works in this Island and the work outside this Island is for the same employer.

**Mariners.**

7. Sections 1 to 5 of this Law do not apply to –

- (a) a person employed as a master of or a seaman on a sea-going British ship 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 while it is in port, or
- (b) a person employed as a skipper of or a seaman on a fishing boat for the time being required to be registered under section 373 of the Merchant Shipping Act 1894.

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**NOTE**

*Section 373 of the Merchant Shipping Act 1894, as it applies to the Bailiwick of Guernsey, has since been repealed by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296, Schedule 10, Part I, with*



*effect from 1st February, 2009, subject to, first, the savings and transitional provisions in section 296 of, and paragraph 1 of Schedule 11 to, the 2002 Law and, second, the savings in section 4 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009.*

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**Employment of husband or wife.**

8. Sections 1 [and 3A] and 4 of this Law do not apply to employment where the employer is the husband or wife of the employee [unless the [parties to the marriage] are separated pursuant to a decree or pronouncement of judicial separation].

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**NOTES**

*In section 8,*

*the words, figure and letter in the first and second pairs of square brackets were inserted by the Conditions of Employment (Amendment) (Guernsey) Law, 1992, respectively section 1(c)(i) and section 1(c)(ii), with effect from 31st March, 1992;*

*the words in square brackets within the second pair of square brackets were substituted by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part 1, paragraph 11, with effect from 2nd May, 2017.*

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**Application of sections 1 to 4 to excluded employment.**

9. Sections 1 to 4 of this Law shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by or under sections 3, 7 and 8 of this Law as if a period of employment terminated or began at that time.

**[Offences.]**

9A. (1) An employer who fails to comply with any provision of section 1, 2, 3A, 4 or 5 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(2) Proceedings under subsection (1) are without prejudice to the provisions of section 10 and to any civil proceedings that may lie against the employer.]

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**NOTE**

*Section 9A was inserted by the Conditions of Employment (Amendment) (Guernsey) Law, 1992, section 1(d), with effect from 31st March, 1992.*

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**Enforcement of rights under this Law.**

**10.** (1) Any dispute or difference between an employer and employee as to the requirements of any provision of this Law [(other than the requirements of section 3A)] shall be deemed to be an industrial dispute within the meaning of section 21 of the Industrial Disputes and Conditions of Employment Law, 1947 (hereafter in this section referred to as "**the Law of 1947**")<sup>a</sup>, and the succeeding provisions of this section shall apply to any reference to the Industrial Disputes Tribunal arising under and by virtue of this Law.

(2) Where an employer does not give an employee a statement as required by section 1 or 4(1) of this Law, the employee may require a reference to be made to the Industrial Disputes Tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant section.

(3) Where a statement purporting to be a statement under sections 1 or 4(1) of this Law, has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Law, either the employer or the employee may require that question to be referred to and determined by the Industrial Disputes Tribunal.

(4) Where, on a reference under subsection (2) of this section, the Industrial Disputes Tribunal determines particulars as being those which ought to have been included or referred to in a statement given under sections 1 or 4(1) of this Law the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Tribunal.

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<sup>a</sup> Ordres en Conseil Vol. XIII, p. 1; Vol. XIV, pp. 11 and 411; Vol. XV, pp. 253 and 314; Vol. XVII, pp. 176, 220 and 459; Vol. XXIII, p. 210; Vol. XXIV, p. 185.

(5) The Industrial Disputes Tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made before the end of the period of three months beginning with the date on which the employment ceased.

(6) In this section the expression "**the Industrial Disputes Tribunal**" means the Industrial Disputes Tribunal constituted under and by virtue of section 2 of the Law of 1947.

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#### NOTES

*In section 10, the words in square brackets in subsection (1) were inserted by the Conditions of Employment (Amendment) (Guernsey) Law, 1992, section 1(e), with effect from 31st March, 1992.*

*The Industrial Disputes and Conditions of Employment Law, 1947 has since been repealed by the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, section 19, with effect from 1st October, 1993.*

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#### **[Powers of enforcement.]**

**10A.** (1) Where any person authorised in writing in that behalf by [the Committee] (whether by name, class or description) has reasonable cause to suspect that an employer has failed to comply with any provision of section 1, 2, 3A, 4 or 5, he may enter at any reasonable time any land –

- (a) which is occupied by the employer, or
- (b) where the employment in question is being undertaken, or
- (c) where there is believed to be any evidence relevant for determining whether or not there has been a failure to comply with any such provision,

taking with him such other persons as he may think fit, and, for the purpose of investigating the suspected failure to comply, he and any person accompanying him

may –

- (i) require any person thereon to reply to such questions, to furnish such information and documents and to provide such assistance as he considers to be necessary for the purposes of investigating the suspected failure to comply,
- (ii) take copies or extracts of any such documents,
- (iii) seize any such documents, or take any other steps necessary to preserve them or protect them from interference, if he suspects that they may otherwise be destroyed, damaged, tampered with or removed,
- (iv) require any person to give an explanation of any such documents or of anything in them, and
- (v) in relation to any documents which are not furnished to him in accordance with his requirements, require any person to state to the best of his knowledge and belief their whereabouts.

(2) A person seeking to exercise any power conferred by this section in relation to any land shall, if so requested by the owner or occupier of the land, furnish evidence of his office or authority.

(3) Any documents seized pursuant to the powers conferred by this section may be retained for a period of 3 months or, if proceedings to which those documents are relevant are instituted within that period, until the conclusion of those proceedings.

(4) A person who, without reasonable excuse, proof whereof

shall lie on him –

- (a) fails to produce or furnish any information or document in accordance with any requirement imposed under this section,
- (b) obstructs or fails to give all reasonable assistance to, or fails to comply in all respects with any requirement made of him by, any person exercising or purporting to exercise any power or authority conferred by or under this section,
- (c) with intent to evade the provisions of this Law relating to inquiry, investigation, search and seizure, destroys, mutilates, defaces, secretes or removes any document, or
- (d) in compliance or purported compliance with any requirement imposed under this section –
  - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
  - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
  - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
  - (iv) recklessly produces or furnishes or recklessly

causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both; and the court convicting him may, in addition to imposing any such penalty, where the offence involved a failure to produce or furnish any information or document, to give assistance to any person or to comply with any requirement made by any person, order the person convicted, within such period as may be specified, to produce or furnish the information or document, to give the assistance or to comply with the requirement in question.

(6) An appeal lies from an order of the court under subsection (5) in the same manner as if it were a penalty imposed upon conviction.

(7) No authorised person shall be obliged to divulge his reasons for belief or suspicion when exercising his powers under this section.

(8) Subject to subsection (9), no obligation or duty of secrecy or of confidence nor any other restriction on the disclosure of information to which a person is subject, whether imposed by statute, contract or otherwise, shall be regarded as being contravened by reason of the compliance by that person with a requirement imposed under this section.

(9) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity; but an advocate or other legal adviser may be required to give the name and address of any client.

[(10) A statement made by a person in compliance with a requirement imposed under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
  - (ii) in proceedings for –
    - (A) an offence under subsection (4),
    - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
    - (C) perjury, or
    - (D) perverting the course of justice.]

(11) In this section "[the **Committee**]" means the [States of Guernsey [Committee for Employment & Social Security]].]

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#### **NOTES**

*Section 10A was inserted by the Conditions of Employment (Amendment) (Guernsey) Law, 1994, section 1, with effect from 2nd November, 1994.*

*In section 10A,*

*subsection (10) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;*

*the words in the second pair of square brackets in subsection (11) were substituted by the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996, section 3, Schedule 2, paragraph 8, with effect from 31st October, 1996;*

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

*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>2</sup>*

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### **Interpretation.**

**11.** (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

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

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

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

**"employment"** means employment under a contract of employment,

**"job"**, in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed,



"**this Island**" means the Island of Guernsey and includes the Island of Herm.

(2) Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

**Citation.**

**12.** This Law may be cited as the Conditions of Employment (Guernsey) Law, 1985.

**Commencement.**

**13.** This Law shall come into force on the expiration of the period of two months commencing on the date on which it is registered on the records of the Island of Guernsey.

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**NOTE**

*The Law was registered on the Records of the Island of Guernsey on 30th September, 1985.*

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<sup>1</sup> The words "Committee for Employment & Social Security" were previously substituted by the Board of Employment, Industry and Commerce by the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996, section 3, Schedule 2, paragraph 8, with effect from 31st October, 1996; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

<sup>2</sup> The functions, rights and liabilities of the Commerce and Employment Department and its Minister were previously transferred to it 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

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6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance; the functions of the Board of Industry under this Law were previously transferred to it from the Board of Employment, Industry and Commerce by the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996, section 1, Schedule 1, paragraph 8, with effect from 31st October, 1996, subject to the savings and transitional provisions in section 2 of the 1996 Ordinance.