

ORDER IN COUNCIL

IX
1998

ratifying a Projet de Loi

ENTITLED

The Employment Protection (Guernsey) Law, 1998

(Registered on the Records of the Island of Guernsey
on the 18th August, 1998.)



1998

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of August, 1998 before de Vic Graham Carey, Esquire, Deputy Bailiff; present:- Leonard Arthur Moss, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory and Keith Bichard, OBE, Esquires, and The Reverend Peter Gerald Lane, Jurats.

The Deputy Bailiff having this day placed before the Court a copy of an Order of Her Majesty in Council dated the 21st day of July, 1998 approving and ratifying a *Projet de Loi* entitled "The Employment Protection (Guernsey) Law, 1998", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:-

At the Court at Buckingham Palace

The 21st day of July 1998

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 7th day of July 1998 in the words following, viz.:-

"YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:-

"1. That, in pursuance of their Resolution of the 1st day of June 1995, the States of Deliberation at a meeting held on the 29th day of April 1998, approved a Bill or "Projet de Loi" entitled "The Employment Protection (Guernsey) Law, 1998", and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or "Projet de Loi" is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Employment Protection (Guernsey) Law, 1998", and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou."

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

The Employment Protection (Guernsey) Law, 1998

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The Employment Protection (Guernsey) Law, 1998

THE STATES, in pursuance of their Resolution of the 1st day of June, 1995^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

MINIMUM PERIODS OF NOTICE & STATEMENT OF REASONS FOR DISMISSAL

Rights of employer and employee to minimum period of notice.

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

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

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

(a) waiving his right to notice on any occasion; or

(b) accepting a payment in lieu of notice.

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

(a) made in contemplation of the performance of a specific task which is not expected to last for more than three months; or

(b) for a fixed term of three months or less;

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

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

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

^a Article XIV of Billet d'État No. XI of 1995.

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

^b An Act of Parliament (1894 c. 60).

Bailiwick of Guernsey under Part IV of the Merchant Shipping Act 1894.

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

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

Written statement of reasons for dismissal.

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

^c Order in Council No. XXXIII of 1994; amended by No. XIV of 1996.

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

(2) An employee shall not be entitled to a written statement under subsection (1) unless on the effective date of termination he has been, or will have been, continuously employed for a period of not less than two years ending with that date.

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

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

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

(5) A complaint may be presented by an employee to the Board under section 17 on the ground that the employer unreasonably failed to provide a written statement under this section or that the particulars of reasons given in purported compliance with this section are inadequate or untrue; and the provisions of Part III of this Law shall apply accordingly.

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

PART II
UNFAIR DISMISSAL

Right not to be unfairly dismissed.

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

Employment to which this Part of this Law applies.

4. (1) This Part of this Law applies to every employment other than-
- (a) employment where under his contract of employment the employee ordinarily works outside Guernsey;
 - (b) employment under a contract for a fixed term of two years or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing (whether the agreement is contained in the contract itself or in a separate agreement) to exclude any claim in respect of rights under this Part of this Law in relation to that contract; or
 - (c) employment as the master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

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

(a) the employment is wholly outside Guernsey; or

(b) he is not ordinarily resident in Guernsey;

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

Meaning of "dismiss" and "dismissal".

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

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

(a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice;

(b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or

(c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

(3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, the employee shall for the purposes of this Part of this Law be taken to be dismissed by his employer, and the reason for the dismissal shall be taken to be the reasons for which the employer's notice is given.

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

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

(5) Where the contract of employment is terminated by the employer and the notice required by section 1 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of section 15(1),

the later date shall be treated as the effective date of termination in relation to the dismissal.

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

General provisions relating to fairness of dismissal.

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

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

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

- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do;
- (b) related to the conduct of the employee;
- (c) was that the employee was redundant;
- (d) was that the employee could not continue to work in the position which he held without contravention

(either on his part or on that of his employer) of a duty or restriction imposed by or under the law of Guernsey; or

- (e) was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

Meaning of "capability" and "qualifications".

7. In section 6, in relation to an employee-

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

Dismissal relating to trade union membership or activities.

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

- (a) was, or proposed to become, a member of an independent trade union;
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time; or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

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

- (a) a time outside the employee's working hours; or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose "**working hours**", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

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

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

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

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

Dismissal on ground of pregnancy.

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

- (a) was that the employee was pregnant; or
- (b) was any other reason connected with her pregnancy, except one of the following reasons-
 - (i) that at the effective date of termination she was or would have become, because of her pregnancy, incapable of adequately doing the work which she was employed to do;
 - (ii) that, because of her pregnancy, she could not do or would not have been able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under the law of Guernsey.

Dismissal of replacement.

10. (1) Where an employer-

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

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

(2) Where an employer-

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

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

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

- (a) any requirement imposed by or under any of the relevant statutory provisions within the meaning of section 35 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987^d; or

^d Recueil d'Ordonnances Tome XXIV, p. 162.

- (b) any recommendation in any provision of a code of practice issued or approved under section 13 of that Ordinance.

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

Dismissal in health and safety cases.

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

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities;
- (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee-
 - (i) in accordance with arrangements established under or by virtue of any enactment or other statutory provision; or
 - (ii) by reason of being acknowledged as such by the employer,

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

(c) being an employee at a place where-

(i) there was no such representative or safety committee; or

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

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

(d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work; or

(e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

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

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

Dismissal on grounds of assertion of statutory right.

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

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

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

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

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

(a) this Law;

(b) the Conditions of Employment (Guernsey) Law, 1985^e; or

(c) the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993^f.

Dismissal on ground of redundancy for inadmissible reasons.

13. (1) Where the reason or principal reason for the dismissal of an employee was that the employee was redundant, but it is shown-

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and

^e Ordres en Conseil Vol. XXIX, p. 42; No. I of 1992 and No. XXIII of 1994.

^f Order in Council No. I of 1993.

- (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason;

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

(2) For the purposes of this section "**inadmissible**", in relation to a reason, means that it is one of those specified in section 8(1), 9, 11(1) (read with section 11(2) and (3)) or 12(1) (read with section 12(2) and (3)).

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

Pressure on employer to dismiss unfairly.

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

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and

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

Qualifying period.

15. (1) Subject to subsection (2), section 3 does not apply to the dismissal of an employee from any employment unless the employee was continuously employed for a period of not less than two years ending with the effective date of termination.

(2) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason or (if more than one) the principal reason for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 9, section 11(1) (read with section 11(2) and (3)) or section 12(1) (read with section 12(2) and (3)).

PART III

THE COMPLAINTS PROCEDURE & THE ADJUDICATORS

The Adjudicators' Panel.

16. (1) The Board shall, after consultation with the Industrial Disputes Officer and organisations respectively representative of employers and employees in Guernsey, draw up and maintain a panel to be called the Adjudicators' Panel.

(2) The Adjudicators' Panel shall consist of such number of persons as in the opinion of the Board is necessary for the purpose of hearing and determining disputes under this Law between employers and employees in Guernsey.

(3) A person appointed to the Adjudicators' Panel under this section shall be an adjudicator for the purposes of this Law.

(4) The Industrial Disputes Officer shall not be appointed to the Adjudicators' Panel.

(5) The Board shall cause lists of the names of persons appointed to the Adjudicators' Panel to be deposited at the Greffe for public inspection and to be published every January in La Gazette Officielle.

(6) An adjudicator shall not disclose any document or information relating to the business or affairs of any person obtained by him, or which he otherwise comes into possession of, under or for the purposes of this Law, except-

- (a) for the purposes of performing his functions as an adjudicator under this Law;
- (b) under the authority of an order of a court;
- (c) for the purposes of the investigation or prosecution of a criminal offence; or
- (d) with the consent of the person to whom the document or information relates and (if different) the person from whom it was obtained.

Complaint to the Board and appointment of adjudicator.

17. (1) A complaint against an employer may be presented to the Board by any person (referred to as "**the complainant**")-

- (a) that he was unfairly dismissed by the employer; or
- (b) that the employer unreasonably failed to provide, in accordance with the provisions of section 2, a written statement giving particulars of the reasons for his dismissal or that the particulars of reasons given in purported compliance with that section are inadequate or untrue;

and upon receipt of the complaint the Board shall, subject to the provisions of subsection (2) and section 18, appoint an adjudicator to hear and determine the complaint.

(2) Subject to subsection (4), the Board shall not act upon a complaint under this section unless it is presented-

- (a) within a period of one month beginning with the effective date of termination; or
- (b) within such further time as the Board may in its absolute discretion allow in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the said period of one month.

(3) If the Board, pursuant to subsection (2)(b), decides that it would have been reasonably practicable for a complaint to be presented within the said period of one month, and that accordingly no further time should be allowed for the presentation of the complaint, the complainant may require the Board to appoint an adjudicator to determine whether the Board's decision was reasonable; and in such a case-

- (a) the adjudicator's determination shall be final; and
- (b) if the adjudicator determines that further time should be allowed for the presentation of the complaint, the complaint shall be heard and determined by a different adjudicator.

(4) The Board shall act upon a complaint under this section if, where the dismissal is with notice, the complaint is presented after the notice is given but before the effective date of termination; and in relation to such a complaint the provisions of this Law, so far as they relate to unfair dismissal, shall have effect-

- (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer;
- (c) as if references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice; and

- (d) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

(5) A complaint to the Board under this section-

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

as the Board may require.

(6) At any time after the receipt of a complaint under this section, the Board may require the complainant to furnish such additional information and documents, verified in such manner, as the Board may think fit.

(7) The adjudicator may refuse to act upon a complaint under this section-

- (a) in default of compliance by the complainant with any provision of, or any requirement imposed under, subsection (5) or (6);
- (b) if the complaint appears to him to be frivolous or vexatious;
- (c) if the complainant and the employer have signed an agreement in the prescribed form, countersigned by an officer of the Board or by the Industrial Disputes

Officer, stating that they have settled their dispute under this Law; or

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

(8) An agreement referred to in subsection (7)(c), being an agreement in the prescribed form stating that a complainant and an employer have settled their dispute under this Law-

- (a) shall be legally binding upon the parties; and
- (b) shall, in so far as it provides for any payment to be made-
 - (i) be enforceable as a judgment debt by the person to whom the payment is to be made against the other party; and
 - (ii) subject to the provisions of the agreement, carry interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985^g from the date of the agreement until the payment is satisfied; and the interest may be

^g Ordres en Conseil Vol. XXIX, p. 135; amended by Order of the Royal Court No. I of 1996.

recovered by the complainant as part of the payment.

Conciliation services to be offered.

18. (1) When a complaint under section 17(1)(a) is presented to the Board-

- (a) the Board shall use its best endeavours to settle the complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation; and
- (b) the Board shall appoint an adjudicator to hear and determine the complaint-
 - (i) if, in its opinion, the complaint cannot be settled by the methods set out in paragraph (a); or
 - (ii) in any case, if the complaint is not settled within six weeks of being presented to it, unless in its opinion conciliation or negotiations are in progress with a view to a settlement.

(2) The decision of the Board as to the matters set out in subsection (1)(b)(i) and (ii) shall be final.

(3) Nothing communicated to the Board or any member or officer thereof or to the Industrial Disputes Officer in relation to the performance of their functions under subsection (1)(a) shall be admissible in evidence in any proceedings

before an adjudicator except with the consent of the person who so communicated it.

Compensation for unfair dismissal.

19. Where an adjudicator finds that the grounds of a complaint under section 17(1)(a) are well-founded, he shall make an award of compensation for unfair dismissal-

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

Amount of award.

20. (1) Subject to the provisions of section 21, the amount of an award of compensation for unfair dismissal shall be a sum equal to-

- (a) three month's pay; or
- (b) where the complainant was paid on a weekly basis, one week's pay multiplied by 13;

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

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

(2) For the purposes of subsection (1), the amount of a month's pay or (as the case may be) a week's pay shall be deemed to be the complainant's average monthly pay during the three months immediately preceding the effective date of termination or (where the complainant was paid on a weekly basis) his average weekly pay during the thirteen weeks immediately preceding that date.

Reduction of award in certain cases.

21. Where the adjudicator finds that the complainant has unreasonably refused an offer by the employer which if accepted would have had the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the adjudicator shall reduce the amount of the award of compensation for unfair dismissal to such extent as he considers just and equitable having regard to that finding.

Remedies for failure to give written statement of reasons for dismissal.

22. (1) Where an adjudicator finds a complaint under section 17(1)(b) well-founded-

- (a) he may make a declaration as to what he finds the employer's reasons were for dismissing the employee; and
- (b) he shall make an award that the employer pay to the employee a sum equal to the amount of-
 - (i) half a month's pay; or

(ii) where the complainant was paid on a weekly basis, two weeks' pay;

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

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

(a) shall be recoverable as a judgment debt by the employee 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, 1985ⁱ from the date of the award until the award is satisfied; and the interest may be recovered by the employee as part of the award.

(3) For the purposes of subsection (1)(b), the amount of a month's pay or (as the case may be) a week's pay shall be deemed to be the complainant's average monthly pay during the three months immediately preceding the effective date of termination or (where the complainant was paid on a weekly basis) his average weekly pay during the thirteen weeks immediately preceding that date.

Appeals from adjudicators to Royal Court.

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

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

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

(3) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 24.

(4) An appeal from a decision of the Royal Court made on an appeal under this section shall, with leave of the Court of Appeal, lie to the Court of Appeal.

Reference of points of law to Royal Court.

24. (1) A question of law arising in connection with the hearing and determination by an adjudicator of a dispute under this Law may, if the adjudicator thinks fit, be referred for decision to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) An appeal from a decision of the Royal Court made on a reference under this section shall, with leave of the Court of Appeal, lie to the Court of Appeal.

Procedure of adjudicators.

25. The Schedule, which is entitled "the adjudication procedure" and which lays down-

- (a) the procedure to be followed by, and the powers to be available to, an adjudicator in hearing and determining a dispute under this Law; and
- (b) other ancillary matters relating to the powers and proceedings of the Board and the adjudicators;

shall have effect.

Appointment of Secretary.

26. The Board shall-

- (a) appoint a Secretary to the adjudicators on such terms and conditions; and
- (b) provide such other officers and facilities;

as the Board thinks fit.

Proceedings to be confidential.

27. (1) No person shall disclose, except for the purposes of legal proceedings or with other lawful excuse, any matter which came to his knowledge by reason of his being present before an adjudicator when the adjudicator was sitting in camera.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding level 5 on the uniform scale.

Interpretation of awards.

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

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

(3) The decision of the adjudicator upon an application under subsection (1) shall be stated in writing to the parties and shall have effect as if it were an original award.

Awards to be recoverable as preferred debts.

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

- (a) an award under section 19 or 22 of this Law shall rank equally with the debts to which section 1(1)(b) of the Preferred Debts Law relates and shall be paid in full, unless the assets are insufficient, in which case the award and the said debts shall abate in equal proportions;

^j Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; and No. III of 1993.

- (b) subject to the provisions of paragraph (a), an award under section 19 or 22 of this Law shall be 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 to which priority is to be given under those provisions shall not, in the case of any one claimant, exceed £3,000 or such other 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.

Awards to be payable in addition to other remedies.

30. An award under section 19 or 22 is in addition to any other right or remedy relating to or arising from the dismissal or the circumstances thereof; and accordingly (without prejudice to the generality of the foregoing) the award shall not be deductible from any damages that may be awarded, whether by a court of law or otherwise, or from any other payment that may become due, in respect or as a consequence thereof.

PART IV
GENERAL PROVISIONS

Codes of practice.

31. (1) The Board may issue codes of practice containing such practical guidance (whether for employers or for employees or for both) as the Board thinks fit-

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

(b) generally for the purposes of this Law.

(2) When the Board proposes to issue a code of practice-

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

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

(c) it may modify the draft accordingly.

(3) In the course of preparing any draft code of practice for eventual publication under subsection (2), the Board shall consult with-

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

(b) such other organisations or bodies;

as appear to the Board to be appropriate.

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

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

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

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

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

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

Delegation of powers.

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

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

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

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

- (a) prevents the carrying out of a function by the Board;
- (b) affects the operation in relation to the Board of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^k.

Proof of documents.

33. In any legal proceedings (including proceedings under this Law before an adjudicator) a document purporting to be a document issued by or on behalf of the Board and to be signed by a member or officer thereof or by the Industrial Disputes Officer-

- (a) shall be received in evidence;

^k Order in Council No. XXI of 1991.

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

Interpretation.

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

"**adjudicator**" means a person appointed to the Adjudicators' Panel;

"**Adjudicators' Panel**" means the panel drawn up and maintained by the Board under section 16;

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

"**Board**" means the States of Guernsey Board of Industry;

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

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

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

"dispute under this Law" means a complaint under section 17(1)(a) or (b);

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

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

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

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

- (a) which consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions and whose principal purposes include the regulation of relations between employers of that description or those descriptions and employees or trade unions; or
- (b) which consists wholly or mainly of-
 - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions); or

- (ii) representatives of such constituent or affiliated organisations;

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

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

"Guernsey" includes Herm and Jethou;

"independent trade union" means a trade union which-

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

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

"Industrial Disputes Officer" means the Industrial Disputes Officer appointed by the States under section 1 of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993¹, and includes the Deputy Industrial Disputes Officer appointed under section 2 of that Law;

"pay", in sections 20 and 22, means all wages or salary (whether or not earned wholly or in part by way of commission) paid to the employee in question pursuant to his contract of employment, including-

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

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

"position", in relation to an employee, means the following matters taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment;

"prescribed" means prescribed by order of the Board;

"qualifications" shall be construed in accordance with section 7;

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

¹ Order in Council No. I of 1993.

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

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

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

"trade union" means an organisation (temporary or permanent)-

- (a) which consists wholly or mainly of employees of one or more descriptions and whose principal purposes include the regulation of relations between employees of that description or those descriptions and employers or employers' associations; or
- (b) which consists wholly or mainly of-
 - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions); or

- (ii) representatives of such constituent or affiliated organisations;

and whose principal purposes include the regulation of relations between employees and employers or between employees and employers' associations, or the regulation of relations between its constituent or affiliated organisations;

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

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

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

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

(3) For the purposes of this Law an employee who is dismissed shall be taken to be dismissed by reason of "**redundancy**" if the dismissal is attributable wholly or mainly to-

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of

which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or

- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased or diminished or are expected to cease or diminish;

and for the purposes of this subsection-

- (i) the business of the employer together with the business or businesses of his associated employers shall be treated as one unless either of the conditions specified in this subsection would be satisfied without so treating those businesses; and
- (ii) the expression "**cease**" means cease either permanently or temporarily and from whatever cause, and "**diminish**" has a corresponding meaning.

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

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

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

General provisions as to subordinate legislation.

35. (1) An Ordinance or order under this Law-

- (a) may be amended or repealed by a subsequent Ordinance or (as the case may be) order hereunder;
- (b) may contain such consequential, incidental, supplemental and transitional provision (including provision for the payment of fees) as may appear to the States or (as the case may be) the Board to be necessary or expedient;
- (c) in the case of an order, shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.

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

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

Amendment of Industrial Disputes Law and Preferred Debts Law.

36. (1) After section 3(5) of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993^m insert the following subsection-

"(6) Nothing communicated to the Industrial Disputes Officer or to any member or officer of the Board in relation to the

^m Order in Council No. I of 1993.

performance of functions under subsection (1) shall be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who so communicated it."

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

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

(3) After section 1(7) of the Preferred Debts (Guernsey) Law, 1983ⁿ, insert the following subsection-

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

Service of documents.

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

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

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode;
- (b) on a body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office;
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the Bailiwick;
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere;
- (e) on an adjudicator, the Industrial Disputes Officer or the Board, by being left at, or sent by post or transmitted to, the principal offices of the Board in Guernsey;

and in this section the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post and the expression "**transmitted**" means

transmitted by telex, facsimile transmission or other similar means which produce a document containing the text of the communication.

(2) If a person notifies an adjudicator, the Industrial Disputes Officer or the Board of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

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

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

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

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

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on an adjudicator, the Industrial Disputes Officer or the Board under or for the purposes of this Law shall be deemed to have been given or served until it is received.

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

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

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

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended⁰.

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

Records of proceedings.

38. The Board shall preserve records of all proceedings before the adjudicators for six years or for such other period as may be prescribed.

⁰ Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.

Board to co-operate with adjudicators.

39. The Board and its members and officers shall, subject to the provisions of section 18(3), give the adjudicators any document or information which is in their possession, custody or power and which is required by the adjudicators to enable them to hear and determine a dispute under this Law.

Citation.

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

Commencement.

41. This Law shall come into force on the day appointed by Ordinance of the States, and such an Ordinance may-

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

SCHEDULE
THE ADJUDICATION PROCEDURE

Section 25

Procedure in hearings.

1. (1) Where the Board appoints an adjudicator to hear and determine a dispute under this Law-

- (a) the adjudicator shall afford the parties a reasonable opportunity of appearing before and being heard by the adjudicator or, if all parties so elect, of submitting to the adjudicator a statement in writing;
- (b) the adjudicator may, subject to the provisions of section 18(3), admit any evidence given for the purposes of the hearing and determination of the dispute notwithstanding any rule of law relating to hearsay or otherwise as to the admissibility of evidence;
- (c) the parties shall be entitled to be present during any hearing by the adjudicator of representations made in person;
- (d) the adjudicator shall afford the parties a reasonable opportunity of replying to the representations made by the other party, either by appearing and being heard in person or (if the original representations were made in writing) by a statement in writing;

- (e) the adjudicator shall consider all representations and replies submitted to the adjudicator by the parties;
- (f) the adjudicator may at any time require either party to furnish further particulars in writing within such time as he may direct with regard to any question referred to him and shall afford the other party a reasonable opportunity of replying thereto in writing;
- (g) the adjudicator may if he thinks fit call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the adjudicator;
- (h) the parties may, if authorised to do so by the adjudicator, cause a summons to be served on any person in the same manner as that in which a summons may be served in a civil action before the Royal Court summoning that person to attend any hearing of the adjudicator to give evidence or produce any document likely to assist the adjudicator in determining any question before the adjudicator, and a person so summoned shall be under a like obligation as to the giving of any evidence or the production of any document as if he were so summoned in respect of such an action;

- (i) the adjudicator may adjourn any hearing from time to time as he thinks fit;
- (j) if after it has been proved to the satisfaction of the adjudicator that the parties have been notified of the place, date and time of a hearing and one of the parties fails to appear at the hearing the adjudicator may proceed to determine any matter in dispute in the absence of that party;
- (k) the decision of the adjudicator shall be in writing, signed by him and transmitted as soon as reasonably practicable to the parties;
- (l) the adjudicator shall cause a notice of his decision to be displayed in the Royal Court House for a period of seven days;
- (m) the adjudicator shall, subject to the above provisions, and subject also to the provisions of any rules of procedure made by the Board under paragraph 2, determine his own procedure.

(2) The provisions of subparagraph (1) are subject to any contrary provision contained in rules of procedure made by the Board under paragraph 2.

Rules as to procedure of adjudicators.

2. (1) The Board may by order prescribe rules of procedure governing or in relation to-

- (a) the notification and presentation of disputes under this Law to the Board;
 - (b) the reference of disputes under this Law to the adjudicators;
 - (c) the hearing, investigation, settlement and determination of disputes under this Law by the Board and by the adjudicators;
 - (d) the summoning of witnesses and the service of documents;
 - (e) the carrying out by the Board and the adjudicators of any of their functions under this Law; and
 - (f) ancillary matters.
- (2) Rules of procedure under subparagraph (1)-
- (a) may regulate procedure in connection with matters preparatory to and subsequent to hearings (including the interpretation and enforcement of awards), as well as in connection with the conduct of hearings;
 - (b) may amend, repeal or modify any provision of this Law relating to a matter of procedure.

Hearings to be in camera.

3. (1) A hearing before an adjudicator shall be in camera.

(2) The adjudicator may at any time exclude any person from the hearing or any part thereof.

Powers of adjudicators as to summoning witnesses, etc.

4. An adjudicator shall, for the purposes of hearing and determining a dispute under this Law, have the same powers as the Royal Court in respect of-

- (a) the attendance and examination of witnesses;
- (b) the administration of oaths or affirmations to witnesses;
- (c) the production of documents and exhibits;

and a summons in relation to any of these matters signed by an adjudicator shall be equivalent to a formal process issued in that behalf in an action before the Royal Court.

Costs.

5. (1) An adjudicator may, subject to any scales of costs prescribed under subparagraph (3), order that the whole or any part of the costs of a hearing (other than the costs of legal representation of any of the parties, which shall be irrecoverable) shall be paid by one or more of the parties in such amount or proportion and on such basis as the adjudicator may direct; and an order for costs under this subparagraph-

- (a) shall be enforceable as a judgment debt by the person in whose favour the order was made; 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^P from the date of the order until the order is satisfied; and the interest may be recovered by the person in whose favour the order was made as part of the award of costs.

(2) The expression "**costs of a hearing**" shall (without prejudice to the generality of the expression) include-

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs;
- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding or conduct of the hearing and the determination of the dispute incurred by the Board, whether under section 26, 38 or 39 or otherwise, or by the Industrial Disputes Officer; and
- (c) the costs, fees, expenses and allowances of the adjudicator.

(3) The Board may by order prescribe maximum scales of costs, fees and expenses in relation to the costs of hearings; and where the Board so

^P Ordres en Conseil Vol. XXIX, p. 135; amended by Order of the Royal Court No. I of 1996.

prescribes a scale in relation to any proceeding or matter, an award of an adjudicator under subparagraph (1) in relation to the costs of such a proceeding or matter shall not exceed the amount prescribed.

(4) The provisions of this paragraph do not apply in relation to the Royal Court and are accordingly without prejudice to the power of the Royal Court to make orders as to the costs of an appeal or reference to it under section 23 or 24.

Offences in relation to hearings, etc.

6. (1) A person who-

(a) in proceedings before an adjudicator, or in making any statement or providing any information or document to an adjudicator, the Board or the Industrial Disputes Officer when acting in the exercise or purported exercise of their functions under this Law-

(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;
- (b) on being duly summoned as a witness before an adjudicator, fails without reasonable excuse (proof whereof shall lie on him) to attend;
- (c) on attending before an adjudicator as a witness, fails, when legally required to do so-
- (i) to take the oath or affirmation;
 - (ii) to produce any document in his possession, custody or power; or
 - (iii) to answer any question put to him;
- (d) does any other thing before an adjudicator which, if done before the Royal Court, would constitute a contempt of court; or
- (e) without reasonable excuse (proof whereof shall lie on him) obstructs or hinders an adjudicator, the Board or

the Industrial Disputes Officer in the exercise or
purported exercise of their functions under this Law;

is guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) is liable on conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both.

Allowances and expenses of adjudicators.

7. There shall be paid to an adjudicator such allowances as the Board may determine together with the travelling and other expenses incurred by him in connection with the exercise of his functions under this Law.