

# PROJET DE LOI

ENTITLED

## **The Employment Protection (Guernsey) (Amendment) Law, 2005 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

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

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\* No. I of 2006.

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## **The Employment Protection (Guernsey) (Amendment) Law, 2005**

### ARRANGEMENT OF SECTIONS

- 1-23. Amendment of Employment Protection Law.
- 24. Savings provisions, etc.
- 25. Citation.
- 26. Commencement.

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## **The Employment Protection (Guernsey) (Amendment) Law, 2005**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> October, 2004<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### **Amendment of Employment Protection Law.**

1. The Employment Protection (Guernsey) Law, 1998, as amended<sup>b</sup> ("**the Law**"), is further amended in accordance with the provisions of this Law.

2. In the arrangement of sections in the Law for the entries relating to Part III substitute the following entries –

#### **"PART III THE COMPLAINTS PROCEDURE & THE TRIBUNAL**

16. Making of complaints to Tribunal.
17. Time limit for presenting complaints.
18. Form and manner of presenting complaints.
19. Power to refuse to hear complaints.
20. Conciliation services to be offered.
21. Compensation for unfair dismissal.
22. Amount of award.
23. Reduction of award in certain cases.
24. Remedies for failure to give written statement of reasons for dismissal.
25. Appeals from Tribunal to Royal Court.
26. Reference of points of law to Royal Court.
27. Appeals from Royal Court to Court of Appeal.

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<sup>a</sup> Article XII of Billet d'État No. XVIII of 2004.

<sup>b</sup> Order in Council No. IX of 1998; amended by No. XIX of 2001 and No. VIII of 2002 and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

- 28. Interpretation of awards.
- 29. Awards to be recoverable as preferred debts.
- 30. Awards to be payable in addition to other remedies.
- 30A. Restrictions on contracting out, and compromise agreements."

3. In the arrangement of sections in the Law –

- (a) for the entry relating to section 39 substitute the following entry –

"Department to co-operate with Tribunal.", and<sup>1</sup>

- (b) for the entry relating to the Schedule substitute the following entry –

"SCHEDULE: Continuous Employment".

4. In section 2(2) of the Law, for "two years" substitute "one year (or such other period as the States may by Ordinance specify)".

5. In section 2(5) of the Law –

- (a) for "to the Department"<sup>c</sup> substitute "to the Employment and Discrimination Tribunal (**"the Tribunal"**)", and

- (b) for "section 17" substitute "section 16".

6. In section 4(1)(b) of the Law, for "two years" substitute "one year (or such other period as the States may by Ordinance specify)".

7. In section 15(1) of the Law, for "two years" substitute "one year (or such other period as the States may by Ordinance specify)".

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<sup>c</sup> The reference to the "Department" was inserted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

**8.** In the form set out in section 15G(4) of the Law<sup>d</sup>, in the penultimate paragraph for "an adjudicator" substitute "the Employment and Discrimination Tribunal".

**9.** In section 15K(1) of the Law<sup>e</sup> –

- (a) for "an adjudicator" substitute "the Tribunal",
- (b) for "section 17(1)(c)" substitute "section 16(1)(c)",  
and
- (c) in paragraphs (a) and (b) for "he" substitute "it".

**10.** For section 15K(4) of the Law substitute the following subsection –

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

- (a) shall be an amount equal to –
  - (i) the complainant's average monthly pay during the six month period immediately preceding the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
  - (ii) where the complainant was paid on a weekly basis, his average weekly pay during the 26 week period immediately preceding that date, or

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<sup>d</sup> Section 15G was inserted by Order in Council No. VIII of 2002.

<sup>e</sup> Section 15K was inserted by Order in Council No. VIII of 2002.

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

11. For Part III of the Law (sections 16 to 30) substitute the following Part –

"PART III  
THE COMPLAINTS PROCEDURE & THE TRIBUNAL

**Making of complaints to Tribunal.**

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

- (a) that he was unfairly dismissed by the employer,
- (b) that the employer unreasonably failed to provide, in accordance with the provisions of section 2, a written statement giving particulars of the reasons for his dismissal or that the particulars of reasons given in purported compliance with that section are inadequate or untrue, or
- (c) that he has been subjected to a detriment in contravention of section 15J,

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

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

- (a) in the case of a complaint under subsection (1)(a) or (c), to the Department in accordance with the provisions of section 20(1), and
- (b) in any case, to the Convenor of the Employment and Discrimination Panel ("**the Panel**") to enable him or, if he is unavailable, the Deputy Convenor of the Panel to appoint (in accordance with the provisions of section 20(2), in the case of a complaint under subsection (1)(a) or (c)) a Tribunal constituted by three members to hear and determine the complaint.<sup>2</sup>

**Time limit for presenting complaints.**

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

- (a) within a period of three months beginning on –
  - (i) the effective date of termination, or
  - (ii) in the case of a complaint under section 16(1)(c), the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
- (b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the complainant presented to the Secretary, allow in a case where it is satisfied that it was not reasonably

practicable for the complaint to be presented within the said period of three months.

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

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

(a) the Tribunal's decision is subject to appeal in accordance with section 25, and

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

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

(a) where an act extends over a period, the "**date of the act**" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on.

(5) For the purposes of subsection (4)(b), and in the absence of evidence establishing the contrary, an employer shall be taken to



decide on a failure to act –

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

(6) The Tribunal shall hear and determine a complaint under section 16(1) 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.<sup>3</sup>

**Form and manner of presenting complaints.**

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

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

as the Secretary may require.

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

**Power to refuse to hear complaints.**

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

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

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

- (a) in default of compliance by the complainant or applicant with any provision of, or any

requirement imposed under, section 18(1) or (2),

- (b) if the complaint or application appears to the Tribunal to be frivolous or vexatious,
- (c) if the complainant or applicant and the employer have signed an agreement in the prescribed form, countersigned by an officer of the Department, stating that they have settled the complaint, or
- (d) if the Tribunal is satisfied that the complainant or applicant and the employer have, otherwise than as mentioned in paragraph (c), settled the complaint by legally binding agreement.

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

- (a) is legally binding on the parties, and
- (b) in so far as it provides for any payment to be made –
  - (i) is enforceable as a judgment debt by the person to whom the payment is to be made against the other party, and
  - (ii) subject to the provisions of the agreement, carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest)

(Bailiwick of Guernsey) Law, 1985<sup>f</sup>  
from the date of the agreement until the  
payment is satisfied, and the interest  
may be recovered as part of the  
payment.<sup>4</sup>

**Conciliation services to be offered.**

**20.** (1) When a complaint under paragraph (a) or (c) of section 16(1) is presented to the Secretary under that section, he shall immediately transmit it to the Department which shall –

- (a) use its best endeavours to settle the complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, and
- (b) remit the complaint to the Secretary –
  - (i) if, in its opinion, the complaint cannot be settled by the methods set out in paragraph (a), or
  - (ii) in any case, if the complaint is not settled within six weeks of being transmitted to it (or, if an application for further time has been made under section 17(1)(b), within six weeks of the final disposal of the application), unless in its opinion conciliation or negotiations are in progress with a view to a settlement.

(2) Where the Department remits a complaint to the

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

Secretary under subsection (1)(b), he shall inform the Convenor of the Panel of the fact and the Convenor (or, if he is unavailable, the Deputy Convenor of the Panel) shall appoint, from the membership of the Panel, a Tribunal (constituted by three members) to hear and determine the complaint.

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

(4) Nothing communicated to the Department or any member or officer thereof in relation to the performance of their functions under subsection (1)(a) is admissible in evidence in any proceedings before the Tribunal except with the consent of the person who so communicated it.<sup>5</sup>

**Compensation for unfair dismissal.**

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

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

**Amount of award.**

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

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

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

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

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

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

**Reduction of award in certain cases.**

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

(2) Where in relation to such a complaint the Tribunal

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

(3) Subsection (2) does not apply if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was one of those specified in –

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

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

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

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

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

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

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

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

(a) is recoverable as a judgment debt by the employee from the employer, and

(b) carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>i</sup> 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 –

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

(b) in a case where, in the opinion of the Tribunal, the basis set out in paragraph (a) for calculating the amount of a month's pay or (as the case may be) a week's pay is inappropriate, shall be

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



calculated on such other basis as the Tribunal may consider to be just and equitable in the circumstances of the case.

**Appeals from Tribunal to Royal Court.**

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

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

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

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

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

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

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

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

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

of the Court of Appeal to give leave to appeal under Part II of that Law.

**Interpretation of awards.**

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

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

(3) The decision of the Tribunal on an application under subsection (1) shall be stated in writing to the parties and has 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<sup>k</sup>, (the "**Preferred Debts Law**"), in the distribution of the property of a person whose affairs have been declared to be in a state of désastre at a meeting of his arresting creditors held before a Jurat as Commissioner, and in the winding up of a company which is insolvent –

- (a) an award under section 15K, 21 or 24 of this Law ranks 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 that award and those debts shall abate in equal proportions,
- (b) subject to the provisions of paragraph (a), an award under section 15K, 21 or 24 of this Law

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<sup>k</sup> Ordres en Conseil Vol. XXVIII, p. 184, No. VII of 1992, No. III of 1993, and No. IX of 1998.

is payable in priority to all debts other than debts to which section 1(1)(a) of the Preferred Debts Law relates, and

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

**Awards to be payable in addition to other remedies.**

**30.** An award under section 15K, 21 or 24 is in addition to any other right or remedy relating to or arising from the complaint or the circumstances thereof, and accordingly (without prejudice to the generality of the foregoing) the award is not deductible from any damages that may be awarded, whether by a court of law or otherwise, or from any other payment that may become due, in respect or as a consequence thereof.<sup>7</sup>

**Restrictions on contracting out, and compromise agreements.**

**30A.** (1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports –

- (a) to exclude or limit the operation of any provision of this Law, or
  - (b) to preclude a person from bringing proceedings under this Law before the Tribunal.
- (2) Subsection (1) does not apply to –
- (a) any provision of an agreement relating to

*Consolidated text*

dismissal from employment such as is mentioned in section 4(1)(b),

- (b) an agreement settling a complaint under this Law in the circumstances described in section 19(3)(c) or (d),
- (c) an agreement settling a complaint under this Law made with the assistance of the Department pursuant to section 20(1)(a), or
- (d) an agreement to refrain from instituting or continuing any proceedings under this Law before the Tribunal if the conditions regulating compromise agreements are satisfied in relation to the agreement.

(3) The conditions regulating compromise agreements are that –

- (a) the agreement is in writing,
- (b) the agreement relates to the particular proceedings,
- (c) the employee has received advice from an independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before the Tribunal,
- (d) there is in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of

*Consolidated text*

loss arising in consequence of the advice,

- (e) the agreement identifies the adviser, and
- (f) the agreement states that the conditions regulating compromise agreements under this Law are satisfied.

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

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

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

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

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

- (6) In subsection (4)(a) **"lawyer"** means –
- (a) an Advocate of the Royal Court,
  - (b) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, or
  - (c) a Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland, or in Scotland." <sup>8</sup>

**12.** In section 31(9) of the Law –

- (a) for "an adjudicator" substitute "the Tribunal", and
- (b) for "the adjudicator" substitute "the Tribunal".

**13.** In section 32(1) of the Law the words "or by the Industrial Disputes Officer" are repealed.

**14.** In section 33 of the Law –

- (a) for "an adjudicator" substitute "the Tribunal", and
- (b) the words "or by the Industrial Disputes Officer" are repealed.

**15.** In section 34(1) of the Law –

- (a) the definitions of "adjudicator", "Adjudicator's Panel", "dispute under this Law" and "Industrial

Disputes Officer" are repealed,

- (b) in the definition of "pay" for the words "in sections 20 and 22," substitute "in sections 15K, 22 and 24,"
- (c) insert the following definitions in the appropriate places –

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

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

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

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

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

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

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

**"Tribunal"** means the Employment and Discrimination Tribunal established under section 2 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,".<sup>9</sup>

**16.** In section 34(4) of the Law for the words "and "pay" and any cognate expressions" substitute ", "pay", "month's pay" and "week's pay" and any cognate expressions".

**17.** After section 34 of the Law, insert the following section –

**"Power to amend Law by Ordinance.**

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

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

**18.** In section 35(1)(b) of the Law, after "the States" insert "or the Royal Court".

**19.** In section 35(1)(c) of the Law, after "in the case of an order" insert "of the Department".<sup>10</sup>

**20.** In sections 37(1)(e), 37(2) and 37(5) of the Law, for "an adjudicator, the Industrial Disputes Officer" substitute "the Secretary, the Tribunal".

**21.** In section 38 of the Law, for "the adjudicators" substitute "the



Tribunal".

22. For section 39 of the Law substitute the following section –

**"Department to co-operate with Tribunal.**

39. The Department and its members and officers shall, subject to the provisions of section 20(4), give the Tribunal any document or information which is in their possession, custody or power and which is required by the Tribunal to enable it to hear and determine a complaint under this Law." <sup>11</sup>

23. For the Schedule to the Law substitute the following Schedule –

"SCHEDULE

Section 34(1)

CONTINUOUS EMPLOYMENT

**Introductory.**

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

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

(a) a month means a calendar month, and

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

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

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

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

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

(4) Subject to paragraph 6, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

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

**Period of continuous employment.**

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

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

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

**Weeks counting in computing period.**

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

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

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

counts in computing the employee's period of employment.

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

**Intervals in employment.**

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

**Employment abroad, etc.**

5. This Schedule applies to a period of employment –

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

**Industrial disputes.**

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

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

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

**Change of employer.**

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

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

- (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and

- (b) the transfer does not break the continuity of the period of employment.

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

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

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

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

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

- (a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and

- (b) the change does not break the continuity of the period of employment.

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

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

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

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

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**NOTE**

*The following case has referred to this Law:*

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

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**Savings provisions, etc.**

24. (1) Any reference in an enactment, statutory instrument or rule of court to a provision of the Law repealed by this Law and re-enacted (with or without modification) by this Law or by the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 shall be construed as a reference to the provision re-enacted.

(2) Any subordinate legislation made or other thing done under a provision of the Law repealed by this Law and re-enacted (with or without modification) by this Law or by the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, or having effect as if so made or done, which could have been made or done under the provision re-enacted, has effect as if made or done under that provision.

**Citation.**

25. This Law may be cited as the Employment Protection (Guernsey) (Amendment) Law, 2005.

**Commencement.**

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

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**NOTE**

*The Law was brought into force on 1st March, 2006 by the Employment Protection (Guernsey) (Amendment) Law, 2005 (Commencement) Ordinance, 2006, section 1.*

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<sup>1</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>2</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>3</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>4</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>5</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>6</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>7</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>8</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

<sup>9</sup> For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

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**10** For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.

**11** For subsequent amendments, see the consolidated text of the Employment Protection (Guernsey) Law, 1998.