

The Employment Protection (Appeals and References) Order, 2006

THE ROYAL COURT, in exercise of the powers conferred upon it by sections 25 and 26 of the Employment Protection (Guernsey) Law, 1998^a and all other powers enabling it in that behalf, hereby orders:-

PART I

APPEALS FROM TRIBUNAL TO ROYAL COURT

Notice of appeal from Tribunal.

1. (1) Notice of an appeal under section 25(1) of the Employment Protection (Guernsey) Law, 1998 ("**the Law**") by a person aggrieved by a decision or award of the Tribunal on a question of law -

(a) shall be in the form set out in the Schedule, and

(b) shall contain a statement of the contentions of law on which the appellant relies.

(2) Notice of an appeal shall be sent to the Secretary within a period of one month beginning on the date of the Tribunal's written decision.

(3) The Secretary shall transmit a copy of the notice of appeal and of the documents attached thereto -

^a Order in Council No. IX of 1998; amended by No. XIX of 2001; No. VIII of 2002; and by the Employment Protection (Guernsey) (Amendment) Law, 2005. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

- (a) to the person chairing the Tribunal,
- (b) to all parties to the complaint (other than the appellant), and
- (c) to the Greffier, who shall acknowledge receipt thereof in writing.

Date of hearing to be determined by Bailiff.

2. (1) The Greffier shall -

- (a) transmit a copy of the notice of appeal and of the documents attached thereto to the Bailiff, who shall determine, and inform the Greffier of, the date and time of the hearing of the appeal, and
- (b) upon being so informed, notify the Secretary of the place, date and time of the hearing.

(2) The Secretary shall give written notice of the place, date and time of the hearing to -

- (a) the person chairing the Tribunal,
- (b) the appellant, and
- (c) all other parties to the complaint.

PART II
REFERENCE OF POINTS OF LAW TO ROYAL COURT

Statement of case to be submitted to Royal Court.

3. (1) If the Tribunal decides that -
- (a) a question of law has arisen in connection with the hearing and determination by it of a complaint, and
 - (b) the question of law should be referred for decision to the Royal Court under section 26 of the Law,

the person chairing the Tribunal shall, within 7 days of the Tribunal so deciding -

- (i) prepare and sign a statement (the "**statement of the case**") setting out the question of law and such particulars of the complaint as are, in his opinion, relevant to the determination of the question of law by the Royal Court, and
 - (ii) transmit the statement of the case to the Secretary.
- (2) The Secretary shall -
- (a) transmit a copy of the statement of the case to the Greffier, who shall acknowledge receipt thereof in writing, and
 - (b) transmit a copy of the statement of the case and of any

amendment made thereto under the provisions of article 4 to all parties to the complaint.

(3) The Greffier shall, upon receipt of the statement of the case, transmit the statement to the Bailiff.

Further particulars to be furnished to Royal Court.

4. The Bailiff may -

- (a) at any time, require the person chairing the Tribunal to furnish to the Greffier further particulars in writing, within such time as he may direct, with regard to any question referred to the Royal Court under this Part of this Order,
- (b) at any time prior to the fixing of the date of the hearing (if any) of any such question -
 - (i) allow the amendment of the statement of the case prepared under article 3(1)(i), and
 - (ii) extend the time laid down in article 3(1) for the preparation of the statement of the case.

Determination by Royal Court without a hearing.

5. If the Royal Court is of the opinion that a question of law referred to it under this Part of this Order can properly be determined on the basis of the statement of the case and any further particulars furnished under article 4(a), the Royal Court may dispense with a hearing and determine the question on that basis.

Notice of hearing by Royal Court.

6. (1) If the Royal Court is of the opinion that a hearing is required for the determination of a question of law referred to it under this Part of this Order, the Bailiff shall determine, and inform the Greffier of, the date and time of the hearing.

(2) The Greffier shall, upon being so informed, notify the Secretary of the place, date and time of the hearing.

(3) The Secretary shall give written notice of the place, date and time of the hearing to -

- (a) the person chairing the Tribunal, and
- (b) all parties to the complaint.

PART III

GENERAL PROVISIONS

Representation before Royal Court.

7. (1) Any party to a complaint which is the subject of an appeal or reference under Part I or II of this Order -

- (a) may be present during the hearing of the appeal or reference before the Royal Court, and
- (b) may (provided that, in the case of a reference, he is called upon to do so by the Royal Court) address the Royal Court in person, by a friend or by an Advocate of the Royal Court.

(2) The person chairing the Tribunal may be present during a hearing before the Royal Court of a reference under Part II of this Order and may, if called upon to do so by the Royal Court, address the Royal Court in person, by a Law Officer of the Crown or by an Advocate of the Royal Court.

Procedure before Royal Court.

8. (1) The Royal Court may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford testimony relevant and material to any question of law to be determined by it on an appeal or reference under Part I or II of this Order.

(2) Any party to a complaint which is the subject of an appeal or reference under Part I or II of this Order may (provided that, in the case of a reference, he is authorised to do so by the Royal Court) cause a summons to be served on any person, in the same manner as a summons may be served in respect of a civil action before the Royal Court, summoning that person to attend a hearing of the Royal Court for the purpose of giving testimony or producing any document likely to assist the Royal Court in determining the question of law which is the subject of the appeal or reference.

(3) A person summoned in accordance with paragraph (2) shall be under a like obligation as to the giving of testimony and the production of documents as if he were summoned in respect of a civil action before the Royal Court.

(4) The Royal Court may adjourn the hearing of any appeal or reference from time to time as it may think fit.

(5) If the Royal Court is satisfied that all parties to a complaint

which is the subject of an appeal or reference under Part I or II of this Order have been notified of the place, date and time of the hearing thereof, and if any of the parties fails to appear, the Royal Court may proceed to determine the appeal or reference, as the case may be, in the absence of that party.

(6) Save as otherwise expressly provided in this Order, the procedure at the hearing of an appeal or reference under Part I or II of this Order shall be such as the Royal Court may from time to time determine.

Notification of decision of Royal Court.

9. (1) The decision of the Royal Court -
- (a) on an appeal to it under Part I of this Order, or
 - (b) on a question of law referred to it under Part II of this Order,

shall be in writing, signed and sealed by the Greffier and transmitted by him to the Secretary.

- (2) The Secretary shall send a copy of the decision to -
- (a) the members of the Tribunal, and
 - (b) all parties to the complaint.

Service of notices.

10. A document to be transmitted or notified under this Order -
- (a) to the Secretary or the Greffier, may be left at or sent

by post to the principal offices of the Department in Guernsey or, as the case may be, the Greffe,

- (b) to any other person, may be served in accordance with section 37 of the Law.

Interpretation.

- 11.** (1) In this Order, except where the context requires otherwise -

"**complaint**" means a complaint under section 16(1)(a), (b) or (c) of the Law which is the subject of the appeal or reference under Part I or Part II of this Order,

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

"**Greffier**" means Her Majesty's Greffier,

"**hearing**" means an oral hearing,

"**Law**" means the Employment Protection (Guernsey) Law, 1998^b,

"**person chairing the Tribunal**" : see paragraph (3),

"**Royal Court**" means the Royal Court sitting as an Ordinary Court,

^b Order in Council No. IX of 1998; amended by No. XIX of 2001; No. VIII of 2002; and by the Employment Protection (Guernsey) (Amendment) Law, 2005. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

"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,

"statement of the case" has the meaning given by article 3(1)(i),

"Tribunal" means the Employment and Discrimination Tribunal established under section 2 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,

and any other expressions have the same meaning as in the Law.

(2) Any provision of this Order imposing a duty upon the Greffier or the Secretary to perform any act shall (except where a specific time limit is imposed) be construed as requiring the performance of the act as soon as is reasonably practicable.

(3) References in this Order to the person chairing the Tribunal include, in relation to any function conferred on that person by this Order, references to any member of the Tribunal appointed by him to undertake that function.

(4) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Order as it applies to the interpretation of an enactment.

(5) Except where the context requires otherwise, any reference in this Order to an enactment is a reference thereto as from time to time amended,

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

repealed and re-enacted (with or without modification), extended or applied.

Repeal.

12. The Employment Protection (Appeals and References) Order, 1999^d is repealed.

Transitional provisions.

13. Notwithstanding the provisions of article 12, the Employment Protection (Appeals and References) Order, 1999 shall apply in relation to a complaint against an employer under section 17(1)(a), (b) or (c) of the Law (as the Law had effect immediately before the date of commencement of the Employment Protection (Guernsey) (Amendment) Law, 2005^e) which was presented to the Department before that date in all respects as that Order had effect immediately before that date.

Citation.

14. This Order may be cited as the Employment Protection (Appeals and References) Order, 2006.

Commencement.

15. This Order shall come into force on the 1st March, 2006.

^d ORC No. I of 1999.

^e The Employment Protection (Guernsey) (Amendment) Law, 2005 came into force on the 1st March 2006.

SCHEDULE

The Employment Protection (Guernsey) Law, 1998

Notice of Appeal to the Royal Court.

To the Secretary to the Tribunal,
States Commerce and Employment Department,
Raymond Falla House,
Longue Rue,
St Martins,
Guernsey GY4 6HG.

I [*insert full name*]
of [*insert full address*]

being aggrieved by a decision or award of the Tribunal on a question of law given
on the day of , 20 [*insert date of decision appealed against*],
in respect of a complaint concerning [*give brief description of complaint and names
of all other parties*]

under the Employment Protection (Guernsey) Law, 1998, hereby give notice of
appeal against the said decision or award.

The contentions of law on which I rely in support of my appeal are set out below.

In support of this appeal the following documents are attached [*insert list of all documents sent with this application*].

Dated this day of, 20.....

Signature

(Appellant)

CONTENTIONS OF LAW

[N.B. The particulars furnished on this form and all other information and documents sent to the Secretary by or on behalf of an appellant in connection with his or her appeal will be disclosed to all other parties to the complaint.]