

Island of  Guernsey

Ordinance of the States

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**The Sex Discrimination
(Employment) (Guernsey)
Ordinance, 2005**

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The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

THE STATES, in pursuance of their Resolutions of the 3rd April, 1996^a and the 27th October, 2004^b, and in exercise of the powers conferred on them by sections 1 and 4 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^c and all other powers enabling them in that behalf, hereby order:-

PART I SEX DISCRIMINATION

Direct and indirect discrimination against women.

1. (1) In any circumstances relevant for the purposes of any provision of Part II of this Ordinance, a person discriminates against a woman if -

- (a) on the ground of her sex he treats her less favourably than he treats or would treat a man, or
- (b) he applies to her a provision, criterion or practice which he applies or would apply equally to a man but-
 - (i) which is such that it would be to the detriment of a considerably larger proportion of women than of men,

^a Article XIII of Billet d'État No. IV of 1996.

^b Article XII of Billet d'État No. XVIII of 2004.

^c Order in Council No. XIII of 2005.

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

(iii) which is to her detriment.

(2) If a person treats or would treat a man differently according to the man's marital status, his treatment of a woman is for the purposes of subsection (1)(a) to be compared to his treatment of a man having the like marital status.

Sex discrimination against men.

2. (1) Section 1, and the provisions of Part II relating to sex discrimination against women, are to be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

(2) In the application of subsection (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

Discrimination on the grounds of gender reassignment.

3. (1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of any provision of Part II of this Ordinance if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.

(2) Subsection (3) applies to arrangements made by any person in relation to another's absence from work.

(3) For the purposes of subsection (1), B is treated less favourably than others under such arrangements if, in the application of the arrangements to any absence due to B undergoing gender reassignment -

(a) he is treated less favourably than he would be if the absence was due to sickness or injury, or

(b) he is treated less favourably than he would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for him to be treated no less favourably.

(4) In subsections (2) and (3) "arrangements" includes terms, conditions or arrangements on which employment, a pupillage or vocational training is offered.

(5) For the purposes of subsection (1), the provisions of Part II framed by reference to discrimination against women shall be treated as applying equally to the treatment of men with such modifications as are requisite.

Direct and indirect discrimination against married persons.

4. (1) In any circumstances relevant for the purposes of any provision of Part II, a person discriminates against a married person of either sex if-

(a) on the ground of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex, or

(b) he applies to that person a provision, criterion or practice which he applies or would apply equally to an

unmarried person but -

- (i) which is such that it would be to the detriment of a considerably larger proportion of married persons than of unmarried persons of the same sex,
- (ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied, and
- (iii) which is to that person's detriment.

(2) For the purposes of subsection (1), the provisions of Part II framed by reference to discrimination against women shall be treated as applying equally to the treatment of men with such modifications as are requisite.

Discrimination by way of victimisation.

5. (1) A person ("**the discriminator**") discriminates against another person ("**the person victimised**") in any circumstances relevant for the purposes of this Ordinance if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has -

- (a) brought proceedings against the discriminator or any other person under this Ordinance,
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this

Ordinance,

- (c) otherwise done anything under or by reference to this Ordinance in relation to the discriminator or any other person, or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance,

or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.

(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

(3) For the purposes of subsection (1), a provision of Part II framed by reference to discrimination against women shall be treated as applying equally to the treatment of men with such modifications as are requisite.

PART II

DISCRIMINATION IN THE EMPLOYMENT FIELD

Discrimination against applicants and employees.

6. (1) A person shall not, in relation to employment by him at an establishment in Guernsey, discriminate against a woman -

- (a) in the arrangements he makes for the purpose of determining who should be offered that employment,
- (b) subject to the provisions of subsection (3), in the terms on which he offers her that employment (including, without limitation, terms as to the payment of money), or
- (c) by refusing or deliberately omitting to offer her that employment.

(2) Subject to the provisions of subsection (3), a person shall not, in the case of a woman employed by him at an establishment in Guernsey, discriminate against her -

- (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits (including, without limitation, benefits consisting of the payment of money), facilities or services, or by refusing or deliberately omitting to afford her access to them, or
- (b) by dismissing her, or subjecting her to any other detriment.

(3) Subsections (1)(b) and (2) apply to provision in relation to death or retirement only to the extent that such provision is earned by or otherwise attributable to -

- (a) contributions made after the expiration of the relevant

period, or

- (b) periods of employment completed after the expiration of the relevant period,

and in this subsection "**the relevant period**" means the period of two years beginning on the date of commencement of this Ordinance.

(4) Subsection (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless -

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees,
- (b) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or
- (c) the benefits, facilities or services relate to training.

Exception where sex is a genuine occupational qualification.

7. (1) In relation to sex discrimination -

- (a) section 6(1)(a) or (c) does not apply to any employment where being a man is a genuine occupational qualification for the job, and

(b) section 6(2)(a) does not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being a man is a genuine occupational qualification for a job only where -

(a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman,

(b) the job needs to be held by a man to preserve decency or privacy because -

(i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman, or

(ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities,

(c) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be

taken to allowing a woman -

- (i) the degree of physical or social contact with a person living in the home, or
- (ii) the knowledge of intimate details of such a person's life,

which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job,

- (d) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and -

- (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men, and

- (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women,

- (e) the nature of the establishment, or of the part of it

within which the work is done, requires the job to be held by a man because -

- (i) it is, or is part of, a hospital, prison or other establishment for persons requiring special care, supervision or attention,
 - (ii) those persons are all men (disregarding any woman whose presence is exceptional), and
 - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman,
- (f) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man,
- (g) the job needs to be held by a man because of restrictions imposed by the laws regulating the employment of women,
- (h) the job needs to be held by a man because it is likely to involve the performance of duties outside Guernsey in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman, or
- (i) the job is one of two to be held by a married couple.

(3) Subsection (2) applies where some only of the duties of the job fall within paragraphs (a) to (h) as well as where all of them do.

(4) Paragraph (a), (b), (d), (e), (f), (g) or (h) of subsection (2) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees -

- (a) who are capable of carrying out the duties falling within that paragraph,
- (b) whom it would be reasonable to employ on those duties, and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Corresponding exception relating to gender reassignment.

8. (1) In their application to discrimination falling within section 3, subsections (1) and (2) of section 6 do not make unlawful an employer's treatment of another person if -

- (a) in relation to the employment in question -
 - (i) being a man is a genuine occupational qualification for the job, or
 - (ii) being a woman is a genuine occupational qualification for the job, and

(b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant paragraph of section 7(2) and any other relevant circumstances.

(2) In subsection (1) the reference to the employment in question is a reference -

(a) in relation to any paragraph of section 6(1), to the employment mentioned in that paragraph,

(b) in relation to section 6(2) -

(i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment,

(ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.

(3) In determining for the purposes of subsection (1) whether being a man or being a woman is a genuine occupational qualification for a job, section 7(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

Supplementary exceptions relating to gender reassignment.

9. (1) In relation to discrimination falling within section 3 -

- (a) section 6(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job,
- (b) section 6(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment, and
- (c) section 6(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.

(2) Subject to subsection (3), there is a supplementary genuine occupational qualification for a job only if -

- (a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers,
- (b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person -
 - (i) the degree of physical or social contact with a person living in the home, or

- (ii) the knowledge of intimate details of such a person's life,

which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job,

- (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and -

- (i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and

- (ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements, or

- (d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of the employer those services cannot be effectively

provided by a person whilst that person is undergoing gender reassignment.

(3) Paragraphs (c) and (d) of subsection (2) apply only in relation to discrimination against a person who -

- (a) intends to undergo gender reassignment, or
- (b) is undergoing gender reassignment.

Discrimination against contract workers.

10. (1) This section applies to any work for a person ("**the principal**") which is available for doing by individuals ("**contract workers**") who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

(2) The principal shall not, in relation to work to which this section applies, discriminate against a woman who is a contract worker -

- (a) in the terms on which he allows her to do that work,
- (b) by not allowing her to do it or continue to do it,
- (c) in the way he affords her access to any benefits (including, without limitation, benefits consisting of the payment of money), facilities or services or by refusing or deliberately omitting to afford her access to them, or
- (d) by subjecting her to any other detriment.

(3) Subject to subsection (4), the principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, being a man would be a genuine occupational qualification for the job.

(4) Subsection (3) does not apply in relation to discrimination falling within section 3.

(5) In relation to discrimination falling within section 3, the principal does not contravene subsection (2)(a), (b), (c) or (d) by doing any act in relation to a woman if -

(a) he does it at a time when, if the work were to be done by a person taken into his employment -

(i) being a man would be a genuine occupational qualification for the job, or

(ii) being a woman would be a genuine occupational qualification for the job, and

(b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.

(6) In relation to discrimination falling within section 3, the principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for

the job.

(7) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

Meaning of "employment at an establishment in Guernsey".

11. (1) For the purposes of this Part of this Ordinance, employment is to be regarded as being at an establishment in Guernsey unless the employee does his work wholly outside Guernsey.

(2) The reference to "employment" in subsection (1) includes -

- (a) employment on board a ship registered in the Bailiwick of Guernsey under the Merchant Shipping Act 1894^d, and
- (b) employment on aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Guernsey.

(3) In the case of employment on board a ship registered in the Bailiwick of Guernsey under the Merchant Shipping Act 1894 (except where the employee does his work wholly outside Guernsey) the ship shall for the purposes of

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

this Part of this Ordinance be deemed to be the establishment.

(4) Where work is not done at an establishment it shall be treated for the purposes of this Part of this Ordinance as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

Partnerships.

12. (1) A firm shall not, in relation to a position as partner in the firm, discriminate against a woman -

- (a) in the arrangements they make for the purpose of determining who should be offered that position,
- (b) in the terms on which they offer her that position,
- (c) by refusing or deliberately omitting to offer her that position, or
- (d) in a case where the woman already holds that position-
 - (i) in the way they afford her access to any benefits (including, without limitation, benefits consisting of the payment of money), facilities or services, or by refusing or deliberately omitting to afford her access to them, or
 - (ii) by expelling her from that position, or subjecting her to any other detriment.

(2) Subsection (1) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Subject to subsection (4), subsection (1)(a) and (c) do not apply to a position as partner where, if it were employment, being a man would be a genuine occupational qualification for the job.

(4) Subsection (3) does not apply in relation to discrimination falling within section 3.

(5) In relation to discrimination falling within section 3, subsection (1) does not make unlawful a firm's treatment of a person in relation to a position as partner where -

(a) if it were employment -

(i) being a man would be a genuine occupational qualification for the job, or

(ii) being a woman would be a genuine occupational qualification for the job, and

(b) the firm can show that the treatment is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.

(6) In relation to discrimination falling within section 3, subsection (1)(a), (c) and, so far as it relates to expulsion, (d)(ii) do not apply to a position as partner where, if it were employment, there would be a supplementary genuine occupational qualification for the job.

(7) Subsection (1)(b) and (d) apply to provision made in relation to death or retirement only to the extent that -

(a) in their application to provision made in relation to retirement, they prohibit a firm from discriminating against a woman -

(i) in such of the terms on which they offer her a position as partner as provide for her expulsion from that position, or

(ii) by expelling her from a position as partner or subjecting her to any detriment which results in her expulsion from such a position, or

(b) such provision is earned by or otherwise attributable to -

(i) contributions made after the expiration of the relevant period, or

(ii) periods in the position as partner completed after the expiration of the relevant period,

and in this subsection "**the relevant period**" means the period of two years beginning on the date of commencement of this Ordinance.

(8) In the case of a limited partnership references in subsection (1) to a partner shall be construed as references to a general partner within the

meaning of section 2(1)(a) of the Limited Partnerships (Guernsey) Law, 1995^e.

Trade unions, etc.

13. (1) This section applies to -

- (a) any organisation of employees,
- (b) any organisation of employers, or
- (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) An organisation to which this section applies shall not, in the case of a woman who is not a member of the organisation, discriminate against her-

- (a) in the terms on which it is prepared to admit her to membership, or
- (b) by refusing, or deliberately omitting to accept, her application for membership.

(3) An organisation to which this section applies shall not, in the case of a woman who is a member of the organisation, discriminate against her-

- (a) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them,

^e Order in Council No. XII of 1995.

- (b) by depriving her of membership, or varying the terms on which she is a member, or
- (c) by subjecting her to any other detriment.

(4) This section does not apply to provision made in relation to the death, or retirement from work, of a member.

Qualifying bodies.

14. (1) An authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade shall not discriminate against a woman -

- (a) in the terms on which it is prepared to confer on her that authorisation or qualification,
- (b) by refusing or deliberately omitting to grant her application for it, or
- (c) by withdrawing it from her or varying the terms on which she holds it.

(2) Where an authority or body is required by law to satisfy itself as to a person's good character before conferring on him an authorisation or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that he, or any of his employees or agents (whether past or present), has committed any act of discrimination which is prohibited by any

provision of this Part of this Ordinance in, or in connection with, the carrying on of any profession or trade.

(3) In this section -

(a) "**authorisation or qualification**" includes recognition, registration, enrolment, approval and certification,

(b) "**confer**" includes renew or extend.

Persons concerned with provision of vocational training.

15. (1) In the case of a woman seeking or undergoing training which would help to fit her for any employment, a person who provides, or makes arrangements for the provision of, facilities for such training shall not discriminate against her -

(a) in the terms on which that person affords her access to any training courses or other facilities concerned with such training,

(b) by refusing or deliberately omitting to afford her such access,

(c) by terminating her training, or

(d) by subjecting her to any detriment during the course of her training.

(2) Subsection (1) does not apply to -

- (a) discrimination which is prohibited by any provision of section 6(1) or (2), or
- (b) discrimination which would be prohibited by any such provision but for the operation of any other provision of this Ordinance.

Employment agencies.

16. (1) An employment agency shall not discriminate against a woman -

- (a) in the terms on which the agency offers to provide any of its services,
- (b) by refusing or deliberately omitting to provide any of its services, or
- (c) in the way it provides any of its services.

(2) References in subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.

(3) This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the woman.

(4) An employment agency is not subject to any liability under this section if it proves -

- (a) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the

operation of subsection (3), its action would not be prohibited, and

(b) that it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Legal relationships which have come to an end.

17. (1) This section applies where -

- (a) there has been a relevant legal relationship between a woman and another person ("the relevant person"), and
- (b) the relationship has come to an end (whether before or after the commencement of this section).

(2) In this section, a "relevant legal relationship" is a relationship during the course of which an act of discrimination by one party to the relationship against the other party to it is prohibited by any provision of this Part of this Ordinance.

(3) The relevant person shall not discriminate against the woman by subjecting her to a detriment where the discrimination arises out of and is closely connected to the relevant legal relationship.

Police.

18. (1) Nothing in this Part of this Ordinance prohibits any discrimination between male and female officers of police as to requirements relating to height, uniform or equipment, or allowances in lieu of uniform or equipment.

(2) In this section "**officer of police**" means -

- (a) a member of the salaried police force of the Island of Guernsey,
- (b) a member of the special constabulary of the Island of Guernsey,
- (c) a police cadet, being a person appointed to undergo training with a view to becoming a person described in paragraph (a) or (b).

Prison officers.

19. Nothing in this Part of this Ordinance prohibits any discrimination between male and female prison officers as to requirements relating to height.

Ministers of religion, etc.

20. (1) Nothing in this Part of this Ordinance applies to employment for the purposes of an organised religion where the employment is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

(2) Nothing in section 14 applies to an authorisation or qualification (as defined in that section) for the purposes of an organised religion where the authorisation or qualification is limited to one sex so as to comply with

the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

(3) In relation to discrimination falling within section 3, this Part of this Ordinance does not apply to employment for the purposes of an organised religion where the employment is limited to persons who are not undergoing and have not undergone gender reassignment, if the limitation is imposed to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

(4) In relation to discrimination falling within section 3, section 14 does not apply to an authorisation or qualification (as defined in that section) for the purposes of an organised religion where the authorisation or qualification is limited to persons who are not undergoing and have not undergone gender reassignment, if the limitation is imposed to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

PART III

OTHER PROHIBITED ACTS

Discriminatory practices.

21. (1) In this section "**discriminatory practice**" means the application of a provision, criterion or practice which -

- (a) results in an act of discrimination prohibited by any provision of Part II taken with section 1(1)(b) or 4(1)(b), or
- (b) would be likely to result in such an act of

discrimination if the persons to whom it is applied were not all of one sex or (as the case may be) were not all of the same marital status.

(2) A person acts in contravention of this section if and so long as-

(a) he applies a discriminatory practice, or

(b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3) Proceedings in respect of a contravention of this section shall be brought only by the Department in accordance with section 55 ("issue of non-discrimination notices").

Discriminatory advertisements.

22. (1) A person shall not publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be prohibited by any provision of Part II.

(2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be so prohibited.

(3) For the purposes of subsection (1), use of a job description with a sexual connotation (such as "waiter", "salesgirl", "postman", or "stewardess") shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

(4) The publisher of an advertisement prohibited by subsection (1) is not subject to any liability under that subsection in respect of the publication of the advertisement if he proves-

(a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be prohibited, and

(b) that it was reasonable for him to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4) which in a material respect is false or misleading commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(6) Proceedings in respect of a contravention of subsection (1) shall be brought only by the Department in accordance with section 55 ("issue of non-discrimination notices").

(7) An advertisement alleged to have been published or caused to be published in contravention of subsection (1) is admissible in evidence in any proceedings (whether before the Tribunal or the court) brought under this Ordinance.

Instructions to discriminate.

23. (1) A person -

- (a) who has authority over another person, or
- (b) in accordance with whose wishes that other person is accustomed to act,

shall not instruct him to do any act which is prohibited by any provision of Part II or procure or attempt to procure the doing by him of any such act.

(2) Proceedings in respect of a contravention of subsection (1) shall be brought only by the Department in accordance with section 55 ("issue of non-discrimination notices").

Pressure to discriminate.

24. (1) A person shall not induce, or attempt to induce, a person to do any act which is prohibited by any provision of Part II by -

- (a) providing or offering to provide him with any benefit, or
- (b) subjecting or threatening to subject him to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

(3) Proceedings in respect of a contravention of subsection (1) shall be brought only by the Department in accordance with section 55 ("issue of non-discrimination notices").

Liability of employers and principals.

25. (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Ordinance as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Ordinance as done by that other person as well as by him.

(3) In any proceedings (whether before the Tribunal or the court) brought under this Ordinance against any person in respect of an act alleged to have been done by an employee of his it is a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act or from doing in the course of his employment acts of that description.

Aiding prohibited acts.

26. (1) A person who knowingly aids another person to do an act which is prohibited by this Ordinance shall be treated for the purposes of this Ordinance as himself doing such an act of the like description.

(2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 25 (or would be so liable but for section 25(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this section knowingly aid another to do an act if -

(a) he acts in reliance on a statement made to him by that

other person that, by reason of any provision of this Ordinance, the act which he aids would not be prohibited by this Ordinance, and

(b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

PART IV

GENERAL EXCEPTIONS FROM PARTS II & III

Charities.

27. (1) Nothing in Parts II and III -

(a) shall be construed as affecting a provision to which this subsection applies, or

(b) prohibits an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision -

(a) which confers benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or relatively insignificant), and

- (b) which is contained in a charitable instrument.
- (3) In this section -
 - (a) "**charitable instrument**" means an enactment or other instrument so far as it relates to charitable purposes, and
 - (b) "**charitable purposes**" means purposes which are exclusively charitable.

Sport, etc.

28. Nothing in Parts II and III, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, prohibits any act relating to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex.

Insurance, etc.

29. Nothing in Parts II and III prohibits the treatment of a person in relation to an annuity, life assurance policy, accident insurance policy, or similar matter involving the assessment of risk, where the treatment -

- (a) was effected by reference to actuarial or other data from a source on which it was reasonable to rely, and
- (b) was reasonable having regard to the data and any other relevant factors.

Communal accommodation.

30. (1) In this section "**communal accommodation**" means residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy or decency should be used by men only or by women only (but which may include some shared sleeping accommodation for men, and some for women, or some ordinary sleeping accommodation).

(2) In this section "**communal accommodation**" also includes residential accommodation all or part of which should be used by men only, or by women only, because of the nature of the sanitary facilities serving the accommodation.

(3) Nothing in Part II prohibits sex discrimination in the admission of persons to communal accommodation if the accommodation is managed in a way which, given the exigencies of the situation, comes as near as may be to fair and equitable treatment of men and women.

(4) In applying subsection (3), account shall be taken of -

(a) whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accommodation should be provided, and

(b) the frequency of the demand or need for use of the accommodation by men as compared with women.

(5) Nothing in Part II prohibits sex discrimination against a woman, or against a man, as respects the provision of any benefit, facility or service if -

- (a) the benefit, facility or service cannot properly and effectively be provided except for those using communal accommodation, and
- (b) in the relevant circumstances the woman or, as the case may be, the man could lawfully be refused the use of the accommodation by virtue of subsection (3).

(6) Neither subsection (3) nor subsection (5) is a defence to an act of sex discrimination prohibited by any provision of Part II unless such arrangements as are reasonably practicable are made to compensate for the detriment caused by the discrimination, but in considering under subsection (5)(b) whether the use of communal accommodation could lawfully be refused, it shall be assumed that the requirements of this subsection have been complied with as respects subsection (3).

Discriminatory training by certain bodies.

31. (1) Nothing in Parts II and III prohibits any act done in relation to particular work by any person in, or in connection with -

- (a) affording women only, or men only, access to facilities for training which would help to fit them for that work, or
- (b) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in

question doing that work in Guernsey, or the number of persons of that sex doing the work in Guernsey was comparatively small.

(2) Nothing in Parts II and III prohibits any act done by any person in, or in connection with, affording persons access to facilities for training which would help to fit them for employment, where it reasonably appears to that person that those persons are in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full time employment.

(3) The discrimination in relation to which subsection (2) applies may result from confining the training to persons who have been discharging domestic or family responsibilities, or from the way persons are selected for training, or both.

(4) This section does not apply in relation to any discrimination prohibited by section 6.

Other discriminatory training, etc.

32. (1) Nothing in Parts II and III prohibits any act done by an employer in relation to particular work in his employment, being an act done in, or in connection with -

- (a) affording his female employees only, or his male employees only, access to facilities for training which would help to fit them for that work, or
- (b) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question among those doing that work or the number of persons of that sex doing the work was comparatively small.

(2) Nothing in section 13 prohibits any act done by an organisation to which that section applies in, or in connection with -

- (a) affording female members of the organisation only, or male members of the organisation only, access to facilities for training which would help to fit them for holding a post of any kind in the organisation, or
- (b) encouraging female members only, or male members only, to take advantage of opportunities for holding such posts in the organisation,

where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question among persons holding such posts in the organisation or the number of persons of that sex holding such posts was comparatively small.

(3) Nothing in Parts II and III prohibits any act done by an organisation to which section 13 applies in, or in connection with, encouraging women only, or men only, to become members of the organisation where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question among those members or the number of persons of that sex among the members was comparatively small.

Trade unions, etc: elective bodies.

33. (1) If an organisation to which section 13 applies comprises a

body the membership of which is wholly or mainly elected, nothing in section 13 prohibits provision which ensures that a minimum number of persons of one sex are members of the body -

- (a) by reserving seats on the body for persons of that sex,
or
- (b) by making extra seats on the body available (by election or co-option or otherwise) for persons of that sex on occasions when the number of persons of that sex in the other seats is below the minimum,

where in the opinion of the organisation the provision is in the circumstances needed to secure a reasonable lower limit to the number of members of that sex serving on the body, and nothing in Parts II and III prohibits any act done in order to give effect to such a provision.

(2) This section shall not be taken as making lawful -

- (a) discrimination in the arrangements for determining the persons entitled to vote in an election of members of the body, or otherwise to choose the persons to serve on the body, or
- (b) discrimination in any arrangements concerning membership of the organisation itself.

Indirect access to benefits, etc.

34. (1) References in this Ordinance to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or

services provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person (the "**actual provider**").

(2) Where, by any provision of this Ordinance, the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances not prohibited, the effect of the provision shall extend also to the liability under this Ordinance of any actual provider.

Acts done for the protection of women.

35. (1) Nothing in Parts II and III prohibits any act done by a person in relation to women if -

- (a) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women, or
- (b) it was necessary for that person to do it in order to comply with a requirement of a relevant statutory provision within the meaning of section 35(1) of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987^f and it was done by that person for the purpose of the protection of the woman in question (or of any class of women that included that woman).

(2) In subsection (1) -

- (a) the reference in paragraph (a) to an existing statutory

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

provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards -

- (i) pregnancy or maternity, or
- (ii) other circumstances giving rise to risks specifically affecting women,

whether the provision relates only to such protection or to the protection of any other class of persons as well, and

- (b) the reference in paragraph (b) to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within paragraph (a)(i) or (ii) of this subsection.

(3) In this section "existing statutory provision" means, subject to subsection (4), any provision of -

- (a) an enactment which came into force before the date of commencement of this Ordinance, or
- (b) an instrument approved or made by or under such an enactment (including one approved or made after the date of commencement of this Ordinance).

(4) Where an enactment which came into force after the date of

commencement of this Ordinance re-enacts (with or without modification) a provision of an enactment which came into force before that date, the provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an enactment which came into force before that date.

Acts safeguarding national security.

36. Nothing in Parts II and III prohibits any act done for the purpose of safeguarding national security.

PART V

COMPLAINTS PROCEDURE & THE TRIBUNAL

Restriction of proceedings for contravention of this Ordinance.

37. Except as provided by this Ordinance, no proceedings, whether civil or criminal, lie against any person in respect of an act by reason that the act is prohibited by any provision of Part II or III.

Making of complaints to Tribunal.

38. (1) A complaint by any person ("**the complainant**") that another person ("**the respondent**") -

- (a) has committed an act of discrimination against the complainant which is prohibited by any provision of Part II, or
- (b) is, by virtue of section 25 or 26, to be treated as having committed such an act of discrimination against the complainant,

may be made to the Employment and Discrimination Tribunal ("**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) to the Department in accordance with the provisions of section 43(1), and

(b) to the Convenor of 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 43(2), a Tribunal constituted by three members (or such other number of members as may from time to time be prescribed by order of the Department under the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005) to hear and determine the complaint.

(3) Subsection (1) does not apply to a complaint under section 14(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

Time limit for presenting complaints.

39. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless it is presented to the Secretary -

(a) within a period of three months beginning on the day when the act complained of was done, 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 the 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 48, and
- (b) if the Tribunal (or the Royal Court on appeal under section 48) 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.

Form and manner of presenting complaints.

40. (1) A complaint under this Ordinance and an application for further time under section 39(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 this Ordinance or an application for further time under section 39(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.

41. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless satisfied that the provisions of section 43(1) ("conciliation services to be offered") have been complied with.

(2) The Tribunal shall not hear and determine a complaint under this Ordinance or an application for further time under section 39(1)(b) -

- (a) if the complainant or applicant and the respondent have signed an agreement in relation to which the conditions set out in section 60 regulating compromise agreements are satisfied, or
- (b) if the complainant or applicant and the respondent have signed an agreement in the prescribed form, countersigned by an officer of the Department, stating

that they have settled the complaint.

(3) The Tribunal may refuse to hear and determine a complaint under this Ordinance or an application for further time under section 39(1)(b) -

- (a) in default of compliance by the complainant or applicant with any provision of, or any requirement imposed under, section 40(1) or (2),
- (b) if the complaint or application appears to the Tribunal to be frivolous or vexatious, or
- (c) if the Tribunal is satisfied that the complainant or applicant and the respondent have, otherwise than as mentioned in subsection (2), settled the complaint by legally binding agreement.

(4) An agreement referred to in subsection (2)(b), being an agreement in the prescribed form stating that the complainant or applicant and the respondent have settled the complaint -

- (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^g from the date of the agreement until the payment is satisfied, and the interest may be recovered as part of the payment.

Time when act complained of is done.

42. For the purposes of this Part of this Ordinance -

- (a) where the inclusion of any term in a contract renders the making of the contract an act which is prohibited by any provision of Part II or III, that act shall be treated as extending throughout the duration of the contract,
- (b) any act extending over a period shall be treated as done at the end of that period, and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and, in the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (c) to decide upon an omission -

- (i) when he does an act inconsistent with doing the omitted act, or

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

- (ii) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Conciliation services to be offered.

43. (1) When a complaint under this Ordinance is presented to the Secretary under section 38(1), 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 39(1)(b), within six weeks of final disposal of that 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 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 (or such other number of members as may from time to time be prescribed by order of the Department under the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005) 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.

Burden of proof before Tribunal.

44. (1) This section applies to any complaint under this Ordinance made to the Tribunal under section 38.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent -

- (a) has committed an act of discrimination against the complainant which is prohibited by any provision of Part II, or
- (b) is, by virtue of section 25 or 26, to be treated as having committed such an act of discrimination against the complainant,

the Tribunal shall uphold the complaint unless the respondent proves that he did not commit, or, as the case may be, is not to be treated as having committed, that act.

Compensation for acts of discrimination.

45. Where the Tribunal finds that a complaint under this Ordinance is well-founded, it shall make an award of compensation -

- (a) which is recoverable as a judgment debt by the complainant from the respondent, 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^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.

46. (1) Subject to the provisions of subsection (3) and section 47, the amount of an award of compensation under section 45 is a sum equal to -

- (a) three month's pay, or
- (b) where the complainant is 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.

(2) For the purposes of subsection (1), the amount of a month's pay or (as the case may be) a week's pay is, subject to the provisions of subsection (3), an amount equal to the complainant's average monthly pay during the three month period immediately preceding the relevant date or (where the complainant was paid on a weekly basis) his average weekly pay during the 13 week period immediately preceding that date.

(3) In a case where, in the opinion of the Tribunal, the basis set out in subsection (1), as read with subsection (2), for calculating the award is inappropriate, the award shall be calculated on such other basis as the Tribunal (having regard to the provisions of those subsections) considers to be just and equitable in the circumstances of the case.

(4) For the purposes of subsection (2), the relevant date is -

- (a) the date of the act which founded the complaint in respect of which the award is made, or
- (b) where the act is one extending over a period of time, the latest date falling within that period which is prior to the date on which the complaint was presented to the Secretary.

Reduction of award in certain cases.

47. Where in relation to a complaint under this Ordinance the Tribunal finds that the complainant has unreasonably refused an offer by the respondent which, if accepted, would have had the effect of putting the complainant in all respects in the position in which he would have been had the act which founded the complaint not occurred, the Tribunal shall reduce the amount of the award of

compensation under section 45 to such extent as it considers just and equitable having regard to that finding.

Appeals from Tribunal to Royal Court.

48. (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 proceedings 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 49.

Reference of points of law to Royal Court.

49. A question of law arising in connection with the hearing and determination by the Tribunal of a complaint under this Ordinance 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.

50. (1) An appeal from a decision of the Royal Court made on an appeal under section 48 or on a reference under section 49 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, 1961ⁱ ("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 of the Court of Appeal to give leave to appeal under Part II of that Law.

Interpretation of awards.

51. (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.

52. 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 of compensation under section 45 of this

ⁱ Ordres en Conseil Vol. XVIII, p. 315.

^j Ordres en Conseil Vol. XXVIII, p. 184, No. VII of 1992, No. III of 1993, and No. IX of 1998.

Ordinance ranks equally with -

- (i) the debts to which section 1(1)(b) of the Preferred Debts Law relates, and
- (ii) any award under section 15K, 21 or 24 of the Employment Protection (Guernsey) Law, 1998^k,

and shall be paid in full, unless the assets are insufficient, in which case the award of compensation under section 45 of this Ordinance and the debts and award described in subparagraphs (i) and (ii) shall abate in equal proportions,

- (b) subject to the provisions of paragraph (a), an award of compensation under section 45 of this Ordinance 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 of compensation under section 45 of this Ordinance to which priority is to be given under those provisions shall not, in the case of

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

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.

53. An award of compensation under section 45 is in addition to any other right or remedy relating to or arising from the complaint or the facts and 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.

Tribunal may join sex discrimination and unfair dismissal complaints.

54. In any case where a person -

- (a) has made a complaint to the Tribunal against a respondent under section 38(1)(a) or (b), and
- (b) has also made a complaint to the Tribunal against that respondent as employer under section 16(1)(a), (b) or (c) of the Employment Protection (Guernsey) Law, 1998¹,

the Tribunal may, if it thinks it desirable to do so, decide that it shall hear and

¹ Order in Council No. IX of 1998; amended by No. XIX of 2001, No. VIII of 2002 and the Employment Protection (Guernsey) (Amendment) Law, 2005. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

determine both complaints at the same time and, where the Tribunal so decides, the provisions of the Employment Protection (Guernsey) Law, 1998 apply in relation to the complaint under section 16(1)(a), (b) or (c) of that Law in all respects.

PART VI
NON-DISCRIMINATION NOTICES

Issue of non-discrimination notices.

55. (1) This section applies to-

- (a) an act of discrimination which is prohibited by any provision of Part II (and so applies whether or not proceedings have been brought in respect of the act), and
- (b) a contravention of section 21, 22, 23 or 24.

(2) If the Department is satisfied that a person is committing, or has committed, any such act or contravention, the Department may serve on him a notice ("**a non-discrimination notice**") requiring him -

- (a) not to commit any such act or contravention, and
- (b) where compliance with paragraph (a) involves changes in any of his practices or other arrangements -
 - (i) to inform the Department that he has effected those changes and what those changes are, and
 - (ii) to take such steps as may reasonably be

required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Department with such other information or documents as may reasonably be required by the notice in order to verify that the notice has been complied with.

(4) The non-discrimination notice may specify the time at which, and the manner and form in which, any information or document is to be furnished to the Department, but the time at which any information or document is to be furnished in compliance with the notice shall not be later than five years after the notice was served.

(5) The Department shall not serve a non-discrimination notice in respect of any person unless it has first -

- (a) given him notice that it is minded to issue a non-discrimination notice in his case, specifying the grounds on which it contemplates doing so,
- (b) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than one month specified in the notice, and
- (c) taken account of any representations so made by him.

(6) A person who -

- (a) without reasonable excuse, fails to comply with any requirement contained in a non-discrimination notice, or
- (b) wilfully alters, suppresses, conceals or destroys a document required to be produced by a non-discrimination notice,

is guilty of an offence and liable on summary conviction -

- (i) in the case of an offence under paragraph (a), to a fine not exceeding level 5 on the uniform scale,
- (ii) in the case of an offence under paragraph (b), to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months, or both.

(7) A person who, in providing any information or document in compliance or purported compliance with a non-discrimination notice -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

- (c) 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
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months, or both.

(8) Proceedings shall not be instituted under subsection (6)(a) in respect of a failure to comply with a non-discrimination notice until the time fixed by section 56 for appealing against the notice has expired or (where an appeal is instituted) until the appeal is finally disposed of.

Appeal against non-discrimination notice.

56. (1) Within a period of one month beginning on the day on which a non-discrimination notice is served on any person, he may appeal against any requirement of the notice to the Tribunal.

(2) A person wishing to appeal under this section shall give notice of appeal to the Secretary who shall immediately transmit the notice 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 three members (or such other number of members as may from time to time be prescribed by order of the Department under the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005) to hear and determine the appeal.

(3) Where the Tribunal considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Tribunal shall quash the requirement.

(4) On quashing a requirement under subsection (3), the Tribunal may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it contained a requirement in the terms specified in the direction; and subsection (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under this subsection.

(5) A person aggrieved on a question of law by a decision of the Tribunal under this section may appeal therefrom to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court, but this subsection does not confer a right of appeal on a question of law which has been referred to the Royal Court under subsection (6).

(6) A question of law arising in connection with the hearing and determination by the Tribunal of an appeal against a non-discrimination notice 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.

(7) No requirement of a non-discrimination notice or decision of the Tribunal shall be quashed solely by reason of a procedural irregularity (whether on the part of the Department or the Tribunal) unless the irregularity was such as to prevent the person on whom the notice was served from presenting his case fairly

before the Department or (as the case may be) the Tribunal.

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

(9) Section 21 of the Court of Appeal (Guernsey) Law, 1961^m ("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 of the Court of Appeal to give leave to appeal under Part II of that Law.

(10) Where under this section the Tribunal or (if there is an appeal from the Tribunal's decision) the Royal Court or Court of Appeal quashes a non-discrimination notice or any requirement thereof, the notice or (as the case may be) the requirement shall be deemed void ab initio.

Register of non-discrimination notices.

57. (1) The Department shall establish and maintain a register of non-discrimination notices ("**the register**").

(2) Any person is entitled, on payment of such fee (if any) as may be determined by the Department -

- (a) to inspect the register during ordinary office hours and take copies of any entry therein, or
- (b) to obtain from the Department a copy, certified by the Department to be correct, of any entry in the register.

^m Ordres en Conseil Vol. XVIII, p. 315.

- (3) The Department may, if it thinks fit -
- (a) determine that the right to inspect the register and take copies of any entry therein conferred by subsection (2)(a) is exercisable in relation to a copy of the register instead of, or in addition to, the original,
 - (b) keep the register in electronic form, in which case references in this section to a copy of an entry in the register are references to the entry produced in a legible form in which it can be taken away.

(4) The register or a copy of it may be inspected at the principal offices of the Department in Guernsey.

(5) A non-discrimination notice shall not be included in the register until the time fixed by section 56 for appealing against the notice has expired or (where an appeal is instituted) until the appeal is finally disposed of.

Power to obtain information.

58. (1) Where the Department believes that a person -
- (a) may be committing or may have committed -
 - (i) an act of discrimination which is prohibited by any provision of Part II, or
 - (ii) a contravention of section 21, 22, 23 or 24, or

- (b) may be failing or may have failed to comply with any requirement contained in a non-discrimination notice,

the Department may serve a notice under this section.

- (2) A notice under this section shall be in writing and may -
 - (a) require any person to furnish such information or documents as may be described in the notice,
 - (b) specify the time by which, and the manner and form in which, the information and documents are to be furnished, and
 - (c) require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or under his control relating to, any matter specified in the notice.

(3) A notice under this section shall not require a person to give any information or to produce any document which he could not be compelled to give in evidence, or produce, in civil proceedings before the Royal Court.

- (4) A person who -
 - (a) without reasonable excuse, fails to comply with any provision of a notice served on him under this section, or

- (b) wilfully alters, suppresses, conceals or destroys a document required to be produced by a notice under this section,

is guilty of an offence and liable on summary conviction -

- (i) in the case of an offence under paragraph (a), to a fine not exceeding level 5 on the uniform scale,
- (ii) in the case of an offence under paragraph (b), to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months, or both.

(5) A person who, in providing any information or document in compliance or purported compliance with a notice under this section -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) 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

- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months, or both.

PART VII GENERAL PROVISIONS

Codes of practice.

59. (1) The Department may issue codes of practice containing such practical guidance as the Department thinks fit for one or more of the following purposes -

- (a) the elimination of discrimination in the field of employment,
- (b) the promotion of equality of opportunity in that field between men and women,
- (c) the promotion of equality of opportunity in that field for persons who intend to undergo, are undergoing or have undergone gender reassignment.

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

- (a) it shall prepare and publish a draft of the 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 publication under subsection (2), the Department shall consult with -

- (a) such organisations, or associations of organisations, representative of employers and employees in Guernsey, and
- (b) such other organisations or bodies,

as appear to the Department to be appropriate.

(4) If the Department 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 Department 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 Department to be necessary or expedient.

(8) The Department may 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 (7) 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 does not of itself render him liable to any proceedings, but in any proceedings under this Ordinance (whether before the Tribunal or the court) any code of practice issued under this section is admissible in evidence and, if any provision of the code appears to the Tribunal or the court to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

(10) Without prejudice to subsection (1), a code of practice issued under this section may include such practical guidance as the Department thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts which are prohibited by this Ordinance.

(11) For the removal of doubt, and without limitation, a code of practice issued under this section may include provision relating to sexual harassment, which expression includes (by way of illustration) unwanted, unreasonable or offensive conduct (physical, verbal or otherwise) of a sexual nature or other conduct based on sex affecting the dignity of men or women at work.

Restrictions on contracting out, and compromise agreements.

60. (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 Ordinance, or
- (b) to preclude a person from bringing proceedings under this Ordinance before the Tribunal.

(2) Subsection (1) does not apply to -

- (a) an agreement settling a complaint under this Ordinance in the circumstances described in section 41(2)(b) or 41(3)(c),
- (b) an agreement settling a complaint under this Ordinance made with the assistance of the Department pursuant to section 43(1)(a), or
- (c) an agreement to refrain from instituting or continuing any proceedings under this Ordinance 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 complaint,

- (c) the complainant 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 complainant in respect of 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 Ordinance 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 order of the Department.

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

- (a) if he is, or is employed by, or is acting in the matter for, the other party or a person connected with the other party,
- (b) in the case of a person within subsection (4)(b), if the trade union is the other party or a person connected with the other party, or
- (c) in the case of a person of a description specified in an order under subsection (4)(c), if any condition specified in the order 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.

(7) For the purposes of subsection (5) any two persons are to be treated as "**connected**" -

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

Delegation of powers.

61. (1) The Department may resolve that any of its functions under this Ordinance may be performed in its name by any one or more individual members or officers of the Department.

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

(3) The Department may by resolution vary or revoke a resolution under subsection (1), but without prejudice to anything previously done pursuant to the resolution 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 Department,
- (b) affects the operation in relation to the Department of

the Public Functions (Transfer and Performance)
(Bailiwick of Guernsey) Law, 1991ⁿ.

Proof of documents.

62. In any legal proceedings (including, without limitation, proceedings under this Ordinance, whether before the Tribunal or otherwise) a document purporting to be a document issued for the purposes of this Ordinance by or on behalf of the Department and to be signed by a member or officer thereof -

- (a) is admissible in evidence,
- (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) is evidence of the matters stated therein.

Interpretation.

63. (1) In this Ordinance, unless the context requires otherwise -

"access" to benefits, facilities or services : see section 34,

"act" includes a deliberate omission,

"advertisement" includes every form of advertisement, whether to the public or not and whether in a newspaper or other publication, by

ⁿ Order in Council No. XXI of 1991.

television, radio or other electronic medium, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly,

"associated employer" : see subsection (4)(a),

"complaint under this Ordinance" means a complaint described in section 38(1)(a) or (b),

"compromise agreement" means an agreement in relation to which the conditions set out in section 60 regulating compromise agreements are satisfied,

"contract of employment" means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

"contract worker" : see section 10(1),

"contravention" includes failure to comply, and related expressions shall be construed accordingly,

"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,

"Department" means the States Commerce and Employment Department,

"**discrimination**" and related expressions : see subsection (2),

"**document**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form,

"**education**" includes any form of training or instruction,

"**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,

"**employment**" means employment under a contract of employment, and related expressions shall be construed accordingly,

"**employment agency**" means a person who, for profit or not, provides services for the purpose of finding employment for employees or supplying employers with employees,

"**employment at an establishment in Guernsey**" : see section 11,

"**enactment**" means any Law, Ordinance, Act of Parliament and Order in Council, and any instrument made thereunder,

"**establishment**" and "**establishment in Guernsey**" : see section 11

and subsection (4)(c) of this section,

"firm" : see section 4 of the Partnership (Guernsey) Law, 1995⁰,

"gender reassignment" means a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process,

"genuine occupational qualification" (except in the expression "supplementary genuine occupational qualification") : see section 7(2),

"Guernsey" includes Herm and Jethou and the territorial waters adjacent to Guernsey, Herm and Jethou,

"instrument" includes a statutory instrument,

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

"man" includes a male of any age,

"non-discrimination notice" means a notice served under section 55(2),

"notice" means a notice in writing,

⁰ Order in Council No. VIII of 1995.

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

"pay", in section 46, 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,

"prescribed" means prescribed by order of the Department,

"profession" includes any vocation or occupation,

"provision, criterion or practice" includes requirement or condition,

"retirement" includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity,

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

"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,

"**sex discrimination**" and related expressions : see subsection (2),

"**supplementary genuine occupational qualification**" : see section 9(2),

"**trade**" includes any business,

"**training**" includes any form of education or instruction,

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

"**woman**" includes a female of any age.

(2) In this Ordinance -

(a) references to discrimination refer to any discrimination falling within sections 1 to 5, and

(b) references to sex discrimination refer to any discrimination falling within section 1 or 2,

and related expressions shall be construed accordingly.

(3) A comparison of the cases of persons of different sex or marital status under section 1(1) or 4(1), or a comparison of the cases of persons

required for the purposes of section 3, must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(4) For the purposes of this Ordinance -

- (a) two employers are to be treated as associated if -
 - (i) one is a company of which the other (directly or indirectly) has control, or
 - (ii) both are companies of which a third person (directly or indirectly) has control,

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

- (b) men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment in Guernsey or at establishments in Guernsey which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes, and
- (c) a person is to be regarded as employed at an establishment if he is employed to work in the establishment or, in the case of a person employed to work other than in an establishment, if his employment is carried out from the establishment.

(5) References in this Ordinance to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references -

- (a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms, and
- (b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer or, as the case may be, the conduct of the other partners.

(6) Any reference in this Ordinance to an enactment, 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.

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

General provisions as to subordinate legislation.

64. (1) An order under this Ordinance -

- (a) may be amended or repealed by a subsequent order

hereunder,

- (b) may contain such consequential, incidental, supplemental and transitional provision (including provision for the payment of fees) as may appear to the Department or (as the case may be) the Royal Court to be necessary or expedient, and
- (c) in the case of an order of the Department, 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 Ordinance to make an 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 order.

Service of documents.

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

- (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 Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office elsewhere,
- (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 Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,

- (e) on the Secretary, the Tribunal or the Department, by being left at, or sent by post or transmitted to, the principal offices of the Department in Guernsey,

and in this section the expression "**by post**" means by ordinary letter post, registered post or recorded delivery service and the expression "**transmitted**" means transmitted by facsimile transmission, electronic mail or other similar means which produce or enable the production of a document containing the text of the communication.

(2) If a person notifies the Secretary, the Tribunal or the Department of an address for service within Guernsey for the purposes of this Ordinance, any document to be given to or served on 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 published in La Gazette Officielle on two occasions respectively falling in successive weeks, 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 the Secretary, the Tribunal or the Department under or for the purposes of this Ordinance shall be deemed to have been given or served until it is received.

(6) If a person on whom a document is to be served under this Ordinance 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 Ordinance.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Ordinance 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; and in this section a "**non-business day**" means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^P.

(8) Service of any document sent by post shall be proved by

^P Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; No. XIV of 1994.

showing the date of posting, the address thereon and the fact of prepayment.

Records of proceedings.

66. The Department shall preserve records of all proceedings before the Tribunal for six years or for such other period as may be prescribed.

Department to cooperate with Tribunal.

67. The Department and its members and officers shall, subject to the provisions of section 43(4), give to 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 Ordinance or an appeal against a non-discrimination notice under section 56.

Amendment and disapplication of Industrial Disputes Law.

68. In section 18(1) of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993^q, for the definition of "industrial dispute" substitute the following -

"**industrial dispute**" means any dispute or difference between an employer and an employee, or between an employee and employees, connected with the employment or non-employment, or the conditions of employment, of any person, other than -

- (a) a dispute under the Employment Protection (Guernsey) Law, 1998 (being a complaint under section 16(1)(a), (b) or (c) of that Law relating to unfair dismissal, a failure to provide a written statement of reasons for

^q Order in Council No. I of 1993, amended by No. IX of 1998 and No. VIII of 2002.

dismissal or subjecting a shop worker to a detriment in contravention of section 15J of that Law),

- (b) a dispute under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (being a complaint described in section 38(1)(a) or (b) of that Ordinance that a person has committed or is to be treated as having committed an act of discrimination prohibited by that Ordinance);".

Amendment of Conditions of Employment Law.

69. In section 1(3) of the Conditions of Employment (Guernsey) Law, 1985^r, after paragraph (f) insert the following paragraph -

"and (g) any terms and conditions relating to maternity pay, maternity leave and the employee's right to return to her job after confinement.".

Amendment of Employment Protection Law.

70. (1) After section 9 of the Employment Protection (Guernsey) Law, 1998^s ("the 1998 Law") insert the following section -

"Dismissal on ground of sex or marital status.

9A. The dismissal of an employee by an employer shall be

^r Ordres en Conseil Vol. XXIX, p. 42, amended by No. I of 1992 and No. XXIII of 1994.

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

regarded for the purposes of this Part of this Law as having been unfair if the dismissal constituted an act of discrimination against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005."

(2) In section 12(4) of the 1998 Law insert the following paragraph after paragraph (c) -

"or (d) the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005."

(3) After section 13(2) of the 1998 Law insert the following subsection -

"(2A) For the purposes of subsection (1)(b) the employee shall, in a redundancy case, be deemed to have been selected for dismissal for an inadmissible reason if his selection for dismissal constituted an act of discrimination against him prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005."

(4) For section 15(2) of the 1998 Law substitute the following subsection -

"(2) Subsection (1) does not apply to the dismissal of an employee if it is shown that -

(a) 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 8(1), section 9, section 11(1) (read with section 11(2) and (3)), section 12(1) (read with section 12(2) and (3)), section 15I(1) (read with section 15I(2)) or section 15I(3), or

(b) the dismissal constituted an act of discrimination against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005."

(5) In section 23(2) of the 1998 Law after "subject to subsection (3)" insert "and subsection (4)".

(6) After section 23(3) of the 1998 Law insert the following subsection -

"(4) Subsection (2) does not apply where the dismissal of the employee constituted an act of discrimination against him prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005."

(7) For section 29 of the 1998 Law substitute the following section -

"Awards to be recoverable as preferred debts.

29. For the purposes of section 1 of the Preferred Debts (Guernsey) Law, 1983 (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 -

(i) the debts to which section 1(1)(b) of the Preferred Debts Law relates, and

(ii) any award of compensation under section 45 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005,

and shall be paid in full, unless the assets are insufficient, in which case the award under section 15K, 21 or 24 of this Law and the debts and award described in subparagraphs (i) and (ii) shall abate in equal proportions,

(b) subject to the provisions of paragraph (a), an award under section 15K, 21 or 24 of this Law 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 provisions shall not, in the case of any one claimant, exceed £3,000 or such greater sum as may for the time being be prescribed by Ordinance of the States for the purposes of section 1(2) of the Preferred Debts Law."

(8) After section 30A of the 1998 Law insert the following section -

"Tribunal may join unfair dismissal and sex discrimination complaints.

30B. In any case where a complainant -

- (a) has made a complaint to the Tribunal against a person under section 16(1)(a), (b) or (c), and
- (b) has also made a complaint to the Tribunal against that person under section 38(1)(a) or (b) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005,

the Tribunal may, if it thinks it desirable to do so, decide that it shall hear and determine both complaints at the same time and, where the Tribunal so decides, the provisions of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 apply in relation to the complaint under section 36(1)(a) or (b) of that Ordinance in all respects."

(9) In the arrangement of sections in the 1998 Law insert the

following entries at the appropriate places -

"9A. Dismissal on ground of sex or marital status.

30B. Tribunal may join unfair dismissal and sex discrimination complaints."

Amendment of Preferred Debts Law.

71. After section 1(8) of the Preferred Debts (Guernsey) Law, 1983^t, insert the following subsection -

"(9) The provisions of this section are subject to the provisions of section 52 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 ("awards to be recoverable as preferred debts")."

Extent.

72. This Ordinance shall have effect in Guernsey, Herm and Jethou.

Citation.

73. This Ordinance may be cited as the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

Commencement.

74. This Ordinance shall come into force on the 1st March, 2006.

^t Ordres en Conseil Vol. XXVIII, p. 184, No. VII of 1992, No. III of 1993, and No. IX of 1998. Section 1(8) was inserted by No. IX of 1998.