

# PROJET DE LOI

ENTITLED

## **The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001**

**THE STATES**, in pursuance of their resolution of the 27<sup>th</sup> day of October, 1999<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the islands of Guernsey, Herm and Jethou.

### Amendment of 1998 Law as to Sunday shop workers.

1. After Part II of the Employment Protection (Guernsey) Law, 1998<sup>b</sup> ("the 1998 Law") insert the following Part -

#### "PART IIA

#### PROTECTION FOR SUNDAY SHOP WORKERS

##### Protected shop workers.

**15A.** (1) Subject to subsection (4), a shop worker is to be regarded as "**protected**" for the purposes of any provision of this Part of this Law if (and only if) subsection (2) or (3) applies to him.

(2) This subsection applies to a shop worker if -

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<sup>a</sup> Article VIII of Billet d'État No. XVIII of 1999.

<sup>b</sup> Order in Council No. IX of 1998.

- (a) on the day before the relevant date he was employed as a shop worker but not to work only on Sunday;
- (b) he has been continuously employed during the period beginning with that day and ending with the day which, in relation to the provision concerned, is the appropriate date; and
- (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(3) This subsection applies to a shop worker whose contract of employment is such that under it he -

- (a) is not, and may not be, required to work on Sunday; and
- (b) could not be so required even if the provisions of this Part of this Law were disregarded.

(4) A shop worker is not a protected shop worker if -

- (a) he has given his employer an opting-in notice on or after the relevant date; and
- (b) after giving the notice, he has expressly agreed with his employer to do shop work on Sunday

or on a particular Sunday.

(5) In this Part of this Law an “**opting-in notice**”, in relation to a shop worker, means written notice, signed and dated by the shop worker, in which he expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

(6) In this Part of this Law “**the relevant date**” means the date of commencement of the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001.

**Contractual requirements relating to Sunday work.**

**15B.** (1) Any contract of employment under which a shop worker who satisfies section 15A(2)(a) was employed on the day before the relevant date is unenforceable to the extent that it -

- (a) requires the shop worker to do shop work on Sunday on or after that date; or
- (b) requires the employer to provide the shop worker with shop work on Sunday on or after that date.

(2) Subject to subsection (3), any agreement entered into after the relevant date between a protected shop worker and his employer is unenforceable to the extent that it -

- (a) requires the shop worker to do shop work on Sunday; or

(b) requires the employer to provide the shop worker with shop work on Sunday.

(3) Where, after giving an opting-in notice, a protected shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(4) For the purposes of section 15A(2)(b), the appropriate date, in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into.

**Contracts with guaranteed hours.**

**15C.** (1) This section applies where -

- (a) under the contract of employment under which a shop worker who satisfies section 15A(2)(a) was employed on the day before the relevant date, the employer is, or may be, required to provide him with shop work for a specified number of hours each week;
- (b) under the contract the shop worker was, or might have been, required to work on Sunday before that date; and
- (c) the shop worker has done shop work on Sunday in that employment (whether or not before that day) but has, on or after that date,

ceased to do so.

(2) So long as the shop worker remains a protected shop worker, the contract shall not be regarded as requiring the employer to provide him with shop work on weekdays in excess of the hours normally worked by the shop worker on weekdays before he ceased to do shop work on Sunday.

(3) For the purposes of section 15A(2)(b), the appropriate date in relation to this section is any time in relation to which the contract is to be enforced.

**Reduction of pay, etc.**

**15D.** (1) This section applies where -

- (a) under the contract of employment under which a shop worker who satisfies section 15A(2)(a) was employed on the day before the relevant date, the shop worker was, or might have been, required to work on Sunday before the relevant date;
- (b) the shop worker has done shop work on Sunday in that employment (whether or not before that date) but has, on or after that date, ceased to do so; and
- (c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker was

intended to be attributable to shop work on Sunday.

(2) So long as the shop worker remains a protected shop worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker in respect of any period by the relevant proportion.

(3) In subsection (2) “**the relevant proportion**” means the proportion which the hours of shop work which (apart from this Part of this Law) the shop worker could have been required to do on Sunday in the period (“**the contractual Sunday hours**”) bears to the aggregate of those hours and the hours of work actually done by the shop worker in the period.

(4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of subsection (3).

(5) For the purposes of section 15A(2)(b), the appropriate date in relation to this section is the end of the period in respect of which the remuneration is paid or the benefit accrues.

**Notice of objection to Sunday working.**

**15E.** (1) A shop worker to whom this section applies may at any time give his employer written notice, signed and dated by the shop worker, to the effect that he objects to Sunday working.

(2) In this Part of this Law an “**opting-out notice**” means

a notice given under subsection (1) by a shop worker to whom this section applies.

(3) This section applies to a shop worker who under his contract of employment -

- (a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice); but
- (b) is not employed to work only on Sunday.

**Opted-out shop workers.**

**15F.** (1) Subject to subsection (2), a shop worker is regarded as “**opted-out**” for the purposes of any provision of this Part of this Law if (and only if) -

- (a) he has given his employer an opting-out notice;
- (b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date; and
- (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

- (2) A shop worker is not an opted-out shop worker if -
- (a) after giving the opting-out notice concerned, he has given his employer an opting-in notice; and
  - (b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(3) In this Part of this Law “**notice period**”, in relation to an opted-out shop worker, means, subject to section 15G(2), the period of three months beginning with the day on which the opting-out notice concerned was given.

**Explanatory statement.**

**15G.** (1) Where a person becomes a shop worker to whom section 15E applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.

- (2) If -
- (a) an employer fails to comply with subsection (1) in relation to any shop worker; and
  - (b) the shop worker, on giving the employer an opting-out notice, becomes an opted-out shop worker;

section 15F(3) has effect in relation to the shop worker with the substitution

for “three months” of “one month”.

(3) An employer shall not be regarded as failing to comply with subsection (1) in any case where, before the end of the period referred to in that subsection, the shop worker has given him an opting-out notice.

(4) Subject to subsection (5), the prescribed form in the case of a shop worker is as follows -

**“STATUTORY RIGHTS IN RELATION TO SUNDAY SHOP  
WORK**

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must -

- be in writing;
- be signed and dated by you;
- say that you object to Sunday working.

For three months after you give the notice, your employer can still

require you to do all the Sunday work your contract provides for.

After the three month period has ended, you have the right to complain to an adjudicator if, because of your refusal to work on Sundays on which the shop is open, your employer –

dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday.”

(5) The States may by Ordinance amend the prescribed form set out in subsection (4).

**Contractual requirements relating to Sunday work.**

**15H.** (1) Where a shop worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it -

(a) requires the shop worker to do shop work on Sunday after the end of the notice period; or

(b) requires the employer to provide the shop worker with shop work on Sunday after the end

of that period.

(2) Subject to subsection (3), any agreement entered into between an opted-out shop worker and his employer is unenforceable to the extent that it -

(a) requires the shop worker to do shop work on Sunday after the end of the notice period; or

(b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(3) Where, after giving an opting-in notice, an opted-out shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(4) For the purposes of section 15F(1)(b), the appropriate date in relation to subsections (2) and (3) of this section is the day on which the agreement is entered into.

**Unfair dismissal of shop workers who refuse Sunday work.**

**15I.** (1) Where an employee who is a protected shop worker or an opted-out shop worker is dismissed, he shall be regarded for the purposes of Part II this Law as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Subsection (1) does not apply in relation to an opted-out shop worker where the reason (or principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) A shop worker who is dismissed shall be regarded for the purposes of Part II of this Law as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker gave (or proposed to give) an opting-out notice to the employer.

(4) For the purposes of section 15A(2)(b) or 15F(1)(b), the appropriate date in relation to this section is the effective date of termination.

**Detriments to shop workers who refuse Sunday work.**

**15J.** (1) An employee who is a protected shop worker or an opted-out shop worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Subsection (1) does not apply to anything done in relation to an opted-out shop worker on the ground that he refused (or proposed to refuse) to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.

(4) Subsections (1) and (3) do not apply where the detriment in question amounts to dismissal.

(5) For the purposes of this section a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by -

- (a) a failure to pay remuneration in respect of shop work on a Sunday which he has not done;
- (b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee; or
- (c) a failure to provide him with any work, remuneration or other benefit which by virtue of section 15C or 15D the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees -

- (a) who are protected shop workers or opted-out shop workers; or

- (b) who under their contracts of employment are not obliged to do shop work on Sunday;

then, if they agree to do shop work on Sunday or on a particular Sunday, subsection (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

(9) For the purposes of section 15A(2)(b) or 15F(1)(b), the appropriate date in relation to this section is the date of the act or failure to act.

(10) For the purposes of subsection (9) -

- (a) where an act extends over a period, the “**date of an act**” means the first day of that period;  
and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall

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

(11) On a complaint that an employee has been subjected to a detriment in contravention of this section, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

**Remedies.**

**15K.** (1) Where an adjudicator finds a complaint under section 17(1)(c) well-founded -

- (a) he shall make a declaration to that effect; and
- (b) he shall make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) The amount of the compensation awarded under subsection (1) shall be equal to the amount of -

- (a) one month's pay; or
- (b) where the complainant was paid on a weekly basis, four weeks' pay;

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

(3) An award of compensation under this section -

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

(4) For the purposes of subsection (2), the amount of a month's pay or (as the case may be) a week's pay shall be deemed to be -

- (a) the complainant's average monthly pay during the three months immediately preceding the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or
- (b) where the complainant was paid on a weekly basis, his average weekly pay during the thirteen weeks immediately preceding that date.

(5) For the purposes of subsection (4) -

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

- (a) where an act extends over a period, the "**date of the act**" means the last day of that period;  
and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

**Interpretation of Part IIA.**

**15L.** (1) In this Part of this Law "**shop worker**" means an employee who, under his contract of employment, is or may be required to do shop work.

(2) In this Part of this Law "**shop work**" means work in or about a shop in Guernsey on a day on which the shop is open for the serving of customers.

(3) Subject to subsection (4), in this Part of this Law "**shop**" includes any premises where any retail trade or business is carried on.

(4) Where premises are used mainly for purposes other than those of retail trade or business and would not (apart from subsection (3)) be regarded as a shop, only such part of the premises as -

- (a) is used wholly or mainly for the purposes of retail trade or business; or
- (b) is used both for the purposes of retail trade or business and for the purposes of wholesale trade and is used wholly or mainly for those two purposes considered together;

is to be regarded as a shop for the purposes of this Part of this Law.

(5) In subsection (4)(b) “**wholesale trade**” means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a trade or business.

(6) In this section “**retail trade or business**” includes -

- (a) the business of a barber or hairdresser;
- (b) the business of hiring goods otherwise than for use in the course of a trade or business; and
- (c) retail sales by auction;

but does not include catering business or the sale in theatres and places of amusement of programmes, catalogues and similar items.

(7) In subsection (6) “**catering business**” means -

- (a) the sale of meals, refreshments or intoxicating

liquor for consumption on the premises on which they are sold; or

- (b) the sale of meals or refreshments prepared to order for immediate consumption off the premises;

and in paragraph (a) “**intoxicating liquor**” has the same meaning as in section 112 of the Liquor Licensing Ordinance 1993<sup>d</sup>.

(8) In this Part of this Law -

“**appropriate date**”, has the meaning given by sections 15B(4), 15C(3), 15D(5), 15H(4), 15I(4) and 15J(9);

“**notice period**”, in relation to an opted-out shop worker, has the meaning given by section 15F(3);

“**opted-out**”, in relation to a shop worker, shall be construed in accordance with section 15F(1) and (2);

“**opting-in notice**”, in relation to a shop worker, has the meaning given by section 15A(5);

“**opting-out notice**”, in relation to a shop worker, has the meaning given by section 15E(2);

“**protected**”, in relation to a shop worker, shall be construed

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<sup>d</sup> Recueil d'Ordonnances Tome XXVI, p. 197.

in accordance with section 15A(1) to (5);

“**relevant date**” has the meaning given by section 15A(6).”.

**Consequential amendments of 1998 Law.**

2. (1) In the arrangement of sections in the 1998 Law insert the following entries after the entry relating to section 15 -

"PART IIA

PROTECTION FOR SUNDAY SHOP WORKERS

- 15A. Protected shop workers.
- 15B. Contractual requirements relating to Sunday work.
- 15C. Contracts with guaranteed hours.
- 15D. Reduction of pay, etc.
- 15E. Notice of objection to Sunday working.
- 15F. Opted-out shop workers.
- 15G. Explanatory statement.
- 15H. Contractual requirements relating to Sunday work.
- 15I. Unfair dismissal of shop workers who refuse Sunday work.
- 15J. Detriments to shop workers who refuse Sunday work.
- 15K. Remedies.
- 15L. Interpretation of Part IIA. ”.

(2) In section 4(1)(b) of the 1998 Law after the words "in relation to that contract" insert "(provided always that any agreement by an employee to exclude any such claim arising pursuant to section 15I(1) or (3) shall be void)".

(3) In section 6(3) of the 1998 Law after "sections 8 to 14" insert "and 15I".

(4) In section 13(2) of the 1998 Law after the words "or in section 6(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (read with section 6(2) of that Law)"<sup>e</sup>, insert "or in section 15I(1) (as read with section 15I(2)) or 15I(3) of this Law".

(5) In section 15(2) of the 1998 Law -

(a) before "section 9," insert "section 8(1),"; and

(b) after the words "(read with section 12(2) and (3))" insert "or section 15I(1) (as read with section 15I(2)) or 15I(3)".

(6) After section 17(1)(b) of the 1998 Law insert the following paragraph -

"or

(c) that he has been subjected to a detriment in contravention of section 15J;"

(7) For section 17(2)(a) of the 1998 Law substitute the following paragraph -

"(a) within a period of one month beginning with -

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<sup>e</sup> Those words were inserted by section 12 of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001.

- (i) the effective date of termination; or
- (ii) in the case of a complaint under section 17(1)(c), the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or".

(8) After section 17(2) of the 1998 Law add the following subsection -

"(2A) For the purposes of subsection (2)(a)(ii) -

- (a) where an act extends over a period, the "**date of the act**" means the last day of that period; and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done."

(9) In section 18(1) of the 1998 Law after the words "under section 17(1)(a)" insert "or (c)".

(10) In section 29(a) and (b) of the 1998 Law after the words "under section 19 or 22" insert "or 15K".

(11) In section 30 of the 1998 Law -

(a) after the words "under section 19 or 22" insert "or 15K"; and

(b) for the word "dismissal" substitute "complaint".

(12) In section 34(1) of the 1998 Law, in the definition of the expression "dispute under this Law", after the words "under section 17(1)(a) or (b)" insert "or (c)".

(13) In paragraph 3 of the Schedule to the 1998 Law -

(a) for the word "to" in the heading substitute "may";

(b) for subparagraph (1) substitute -

"(1) The adjudicator may declare that the whole or any part of a hearing before him shall be in camera."

### **Consequential amendments of Industrial Disputes Law and other legislation.**

3. (1) In section 18(1) of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993<sup>f</sup>, in the definition of "industrial dispute", after

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<sup>f</sup> Order in Council No. I of 1993; amended by No. IX of 1998.

the words "a written statement of reasons for dismissal"<sup>g</sup> insert "or under section 17(1)(c) of that Law relating to a shop worker being subjected to a detriment in contravention of section 15J of that Law".

(2) In section 11(1) of the Employment Protection (Appeals and References) Order, 1999<sup>h</sup>, in the definition of the expression "dispute", after the words "section 17(1)(a) or (b)" insert "or (c)".

(3) In section 1 of the Employment Protection (Recoverable Costs) Order, 1999<sup>i</sup> after the words "section 17(1)(a) or (b)" insert "or (c)".

**Citation.**

4. This Law may be cited as the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001.

**Commencement.**

5. This Law shall come into force on the day appointed by Ordinance of the States.

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<sup>g</sup> Those words were inserted by section 36(2) of Order in Council No. IX of 1998.

<sup>h</sup> Order of the Royal Court No. I of 1999.

<sup>i</sup> Guernsey Statutory Instrument No. 8 of 1999.