

# **The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016**

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# **The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016**

**THE STATES**, in pursuance of their Resolutions of the 21<sup>st</sup> February, 2012<sup>a</sup> and the 29<sup>th</sup> July, 2015<sup>b</sup>, and in exercise of the powers conferred on them by sections 1 and 2 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>c</sup>, and section 34A of the Employment Protection (Guernsey) Law, 1998<sup>d</sup>, hereby order:-

## **PART 1 MATERNITY LEAVE**

### **Entitlement to basic maternity leave.**

1. (1) An employee is entitled to be absent from work on basic maternity leave as set out in this Ordinance if the conditions set out in subsection (2) are satisfied.

(2) The conditions are that at least three months before her due date, or if that is not reasonably practicable, as soon as reasonably practicable thereafter, she notifies her employer in writing of –

(a) her pregnancy,

(b) her due date,

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<sup>a</sup> Article VI of Billet d'État No. IV of 2012.

<sup>b</sup> Article VIII of Billet d'État No. XIV of 2015.

<sup>c</sup> Order in Council No. XIII of 2005.

<sup>d</sup> Ordres en Conseil Vol. XXXVIII, p. 239; as amended by Vol. XLI, p. 605; Vol. XLII(1), p. 229; Order in Council No. 1 of 2006; Order in Council No.1 of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXX, p. 627.

- (c) the date on which she intends her maternity leave to start (which must be eight weeks or fewer before her due date), and
- (d) the date on which she intends her maternity leave to end.

(3) To satisfy the conditions at subsection (2)(a) and (b), an employee must, if requested by her employer, produce for his inspection a certificate from a doctor or midwife confirming her pregnancy and stating her due date.

**Entitlement to additional maternity leave.**

2. An employee is entitled to be absent from work on additional maternity leave as set out in this Ordinance if she is entitled to basic maternity leave under section 1 and she has, at the beginning of the eleventh week before her due date, been continuously employed for a period of not less than 15 months.

**Compulsory maternity leave.**

3. (1) An employer may not permit an employee to work during the period of two weeks commencing with the day on which her childbirth occurs ("**compulsory maternity leave period**").

(2) An employer who permits an employee to work during a compulsory maternity leave period in contravention of subsection (1) is guilty of an offence, and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Commencement of maternity leave periods.**

4. (1) Subject to the provisions of this Ordinance, an employee may

be absent from work during a maternity leave period as defined in this section and section 5.

(2) An employee's period of basic maternity leave ("**basic maternity leave period**") commences on the earliest of –

- (a) the date which, in accordance with section 1(2)(c), she notified to her employer as the date on which she intends her basic maternity leave period to start,
- (b) where, after the notification in (a) has been made, her employer agrees at the employee's request to her starting her basic maternity leave period on another date, that other date, and
- (c) the first day after the beginning of the sixth week before the due date on which she is absent from work wholly or partly because of pregnancy.

(3) Where the employee's basic maternity leave period has not commenced by virtue of subsection (2) when childbirth occurs, her basic maternity leave period commences on the day on which childbirth occurs.

(4) An employee's period of additional maternity leave ("**additional maternity leave period**") commences on the day after her last day of basic maternity leave.

#### **Duration of maternity leave periods.**

5. (1) Subject to subsection (3), an employee's basic maternity leave period continues for the period of 12 weeks from its commencement, or until the end of the compulsory maternity leave period provided for in section 3 if later.

(2) Subject to subsection (3), where an employee is entitled to additional maternity leave, her additional maternity leave period continues until the end of the period of 26 weeks beginning with the commencement of her basic maternity leave period.

(3) Where the employee is dismissed after the commencement of a basic or additional maternity leave period but before the time when (apart from this section) that period would end, the period ends at the time of the dismissal.

**"Keeping in touch" days.**

6. (1) Subject to section 3 and the provisions of this section, on giving one month's notice to her employer, or, if that is not reasonably practicable, such notice as is reasonably practicable in the circumstances, an employee may return to work for a period not exceeding ten days, or for several periods not exceeding ten days in total, during a maternity leave period.

(2) An employee working pursuant to subsection (1) shall be taken to be entitled under her contract of employment to be paid at the same rate and to receive the same allowances as she was entitled to immediately before her maternity leave period commenced.

(3) For the avoidance of doubt, a period or periods of work under this section do not change the duration of an employee's maternity leave period.

**Requirement to notify intention to return during a maternity leave period.**

7. (1) An employee who intends to return to work earlier than the end of her basic maternity leave period or, where she is entitled to additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 21 days' notice of the date on which she intends to return.

(2) If an employee attempts to return earlier than the end of a maternity leave period without complying with subsection (1), her employer is entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has 21 days' notice of her return.

(3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of the relevant maternity leave period.

(4) If an employee whose return to work has been postponed under subsection (2) has been notified that she is not to return to work before the date to which her return was postponed, her employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

**Requirement to notify intention to return after additional maternity leave.**

8. (1) Where, not earlier than 21 days before the end of her basic maternity period, an employee who is entitled to additional maternity leave is requested in accordance with subsection (3) by her employer to notify him of –

- (a) the date on which childbirth occurred, and
- (b) whether she intends to return to work at the end of her additional maternity leave period,

the employee shall give the requested notification within 21 days of receiving the request.

(2) In so far as the provisions of the Sex Discrimination

(Employment) (Guernsey) Ordinance, 2005<sup>e</sup> ("**the Sex Discrimination Ordinance**") and the Employment Protection (Guernsey) Law, 1998 ("**the Employment Protection Law**") protect an employee against dismissal, discrimination or other detriment for the reason that she took additional maternity leave, they do not apply in relation to an employee who has failed to notify her employer in accordance with subsection (1).

- (3) A request under subsection (1) shall be –
  - (a) made in writing, and
  - (b) accompanied by a statement in writing –
    - (i) explaining how the employee may determine, in accordance with section 5(2), the date on which her additional maternity leave period will end, and
    - (ii) warning of the consequence, under subsection (2), of failure to respond to the employer's request within 21 days of receiving it.

**Redundancy during maternity leave.**

9. (1) This section applies where, during an employee's basic or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract)

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<sup>e</sup> Recueil d'Ordonnances Tome XXX, p. 627.



alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (3) (and takes effect immediately on the ending of her employment under the previous contract).

- (3) The new contract of employment must be such that –
- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
  - (b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under her previous contract.

(4) For the avoidance of doubt, where an employee enters into a new contract of employment offered under subsection (2), her continuity of employment within the meaning of the Employment Protection Law is not broken.

(5) If this section applies and subsection (2) is not complied with, section 9 of the Employment Protection Law (Dismissal on ground of pregnancy, childbirth or adoption, or maternity leave etc.) applies.

**Right to return after maternity leave.**

**10.** (1) Subject to subsection (2), an employee who takes maternity leave is entitled to return from that maternity leave to the job in which she was employed before her absence or, if it is not reasonably practicable for her employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in her circumstances.

- (2) Subsection (1) does not apply where section 9 applies.
- (3) An employee's right to return under subsection (1) is to return—
  - (a) on terms and conditions as to remuneration no less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her basic maternity leave period,
  - (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to her maternity leave were continuous with her employment following her return to work, and
  - (c) otherwise on terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work during her period of maternity leave.

## PART 2

### MATERNITY SUPPORT LEAVE

#### **Entitlement to maternity support leave.**

**11.** (1) Where an employee is entitled to basic maternity leave under section 1, her partner is entitled to maternity support leave, during which he or she may be absent from work, if the condition at subsection (2) is satisfied.

(2) The condition referred to in subsection (1) is that, at the beginning of the eleventh week before the employee's due date, her partner has been continuously employed for a period of not less than 15 months.

(3) Maternity support leave commences on the day childbirth occurs or, if the employee's partner so elects, on the day –

- (a) the employee is,
- (b) her baby is, or
- (c) both the employee and her baby are,

discharged from hospital; and it continues for the period of two weeks from its commencement.

(4) In this section, "**partner**" means (subject to subsection 5) the person nominated by the employee in writing as her partner for the purposes of this section.

(5) If the employee is –

- (a) married, or
- (b) unmarried and living with someone as part of a couple,

then her spouse or co-habitee (as the case may be) will be deemed to be her partner for the purposes of this section unless she nominates another person in writing.

### PART 3 ADOPTION LEAVE AND ADOPTION SUPPORT LEAVE

**Adoption leave and adoption support leave.**

12. (1) The provisions of Parts 1 and 2, subject to the exceptions, adaptations and modifications specified in Schedule 1, apply to an employee who is adopting a child as they do to other employees.

(2) For the purposes of this Ordinance, an employee adopts a child if that child is aged 17 years or younger when placed with the employee for adoption.

PART 4

GENERAL PROVISIONS

**Surrogacy.**

13. (1) Subject to subsection (2), the Department may by regulations provide for the application of Parts 1 and 2 (subject to any modifications specified in the regulations) to –

- (a) an employee and her partner (within the meaning of section 11) who are the intended parents of a baby being born pursuant to a surrogacy arrangement as if the employee was the woman giving birth,
- (b) an employee who gives birth pursuant to a surrogacy arrangement.

(2) For the avoidance of doubt, section 3 applies to an employee who gives birth pursuant to a surrogacy arrangement.

(3) In this section, "**surrogacy arrangement**" has the meaning

given in section 109 of the Children (Guernsey and Alderney) Law, 2008<sup>f</sup>.

**Ante-natal care.**

**14.** (1) Subject to subsection (2), an employee is entitled to time off during her working hours to attend appointments to receive ante-natal care, where the appointment is attended on the advice of a doctor, midwife, health visitor or district or community nurse, and an employer may not unreasonably refuse to allow an employee to attend such an appointment.

(2) An employee is not entitled to take time off under this section to keep an appointment unless, if her employer requests her to do so, she produces for his inspection –

- (a) a certificate from a doctor or midwife confirming her pregnancy, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Subsection (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).

(4) In this Ordinance "**ante-natal care**" includes medical examinations, appointments with the employee's midwife, ante-natal classes, and parent craft classes; and for the purposes of this section, the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, she is required to be at work.

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<sup>f</sup> Order in Council No. XIV of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, pp.480 and 709.

**Application of terms and conditions during maternity and adoption leave.**

- 15.** An employee who takes maternity leave or adoption leave –
- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to –
    - (i) notice of the termination of the employment contract by her employer,
    - (ii) compensation in the event of redundancy, and
    - (iii) disciplinary and grievance procedures,
  - (b) is bound, during that period, by her implied obligation of good faith and any terms and conditions of her employment relating to –
    - (i) notice of the termination of the employment contract by her,
    - (ii) disclosure of confidential information,
    - (iii) the acceptance of gifts or other benefits, and
    - (iv) her participation in any other business.

**Contractual rights to maternity leave, etc.**

- 16.** (1) This section applies where an employee is entitled to –

- (a) basic maternity leave,
- (b) additional maternity leave,
- (c) maternity support leave, or
- (d) adoption leave,

(referred to in subsection (2) as a "statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise.

(2) In a case where this section applies –

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of this Ordinance relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the contractual right described in paragraph (a) as they apply to the exercise of the statutory right.

**Detriments to employees taking maternity support leave and adoption support leave.**

17. (1) An employee has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer on the ground

that the employee took, or sought to take, maternity support leave or adoption support leave.

(2) Subsection (1) does not apply where the detriment in question amounts to dismissal.

(3) An employee may make a complaint to the Tribunal that he has been subjected to a detriment in contravention of subsection (1) under section 16(1)(c) of the Employment Protection Law.

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

**"Keeping in touch" days and ante-natal care: non-discrimination notices.**

**18.** (1) This section applies where the Department is satisfied that an employee's employer has –

- (a) unreasonably refused to permit her to return to work under section 6(1), or
- (b) unreasonably refused to permit her to take time off as required by section 14.

(2) Where this section applies, Part VI (Non-Discrimination Notices) of the Sex Discrimination Ordinance shall apply in respect of the refusal in question as if it were an act of discrimination prohibited by Part II of that Ordinance, and that Ordinance shall be construed accordingly.

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<sup>g</sup> Recueil d'Ordonnances Tome XXX, p. 606.



**General provisions as to regulations.**

19. (1) Regulations under this Ordinance -
- (a) may be amended or repealed by subsequent regulations hereunder,
  - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Department to be necessary or expedient, and
  - (c) 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 them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.
- (2) Any power conferred by this Ordinance to make regulations 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 specified in the regulations.

**Amendment of the Employment Protection Law.**

20. The Employment Protection Law is amended as set out in Schedule 2.

**Amendment of the Sex Discrimination Ordinance.**

21. The Sex Discrimination Ordinance is amended as set out in Schedule 3.

**Offences by legal persons and unincorporated bodies.**

22. (1) Where a legal person is guilty of an offence under section 3, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under section 3 is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under section 3 is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law must be paid from the funds of that body.

(6) In this section, "**legal person**" includes any body corporate and any other body of persons on which legal personality is conferred by any

enactment.

**Interpretation.**

23. (1) In this Ordinance -

"**associated employer**" has the same meaning as in the Employment Protection Law,

"**childbirth**" means the birth of a living child, or the birth of a child whether living or dead after 24 weeks of pregnancy,

"**continuously employed**" and "**contract of employment**" have the same meanings as in the Employment Protection Law,

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

"**district or community nurse**" has the same meaning as in the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008<sup>h</sup>,

"**doctor**" means a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987<sup>i</sup>,

"**due date**" means the date on which it is expected childbirth will occur,

"**employee**" and "**employer**" have the same meanings as in the

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<sup>h</sup> Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 540 and Ordinance No. XLI of 2013.

Employment Protection Law,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**foundation official**" has the meaning given by the Foundations (Guernsey) Law, 2012<sup>j</sup>,

"**health visitor**" has the same meaning as in the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008,

"**midwife**" means a registered midwife within the meaning of the Nurses, Midwives and Health Visitors Ordinance, 1987<sup>k</sup>,

"**redundancy**" has the same meaning as in the Employment Protection Law,

"**States**" means the States of Deliberation,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, bylaw or other instrument made under any enactment and having legislative effect.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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<sup>i</sup> Recueil d'Ordonnances, Tome XXIV, pp. 79, 238; as amended by Ordres en Conseil Vol. XXXI, p. 278, and Recueil d'Ordonnances Tome XXIX, p. 406.

<sup>j</sup> Order in Council No. I of 2013.

**Extent.**

24. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

**Application.**

25. (1) The provisions of Part 1 have effect only in relation to an employee whose due date is 7<sup>th</sup> August 2016 or later.

(2) The provisions of Part 2 have effect only in relation to the partner of an employee whose due date is 7<sup>th</sup> August 2016 or later.

(3) The provisions of Part 1, as those provisions have effect pursuant to Part 3 and Schedule 1, have effect only in relation to an employee whose expected placement date is 7<sup>th</sup> August 2016 or later.

(4) The provisions of Part 2, as those provisions have effect pursuant to Part 3 and Schedule 1, have effect only in relation to the partner of an employee whose expected placement date is 7<sup>th</sup> August 2016 or later.

(5) In subsection (2) "partner" has the meaning given in section 11, and in subsection (4) "partner" has the meaning given in section 11, as that provision has effect pursuant to Part 3 and Schedule 1.

(6) In subsections (3) and (4) "expected placement date" has the meaning given in section 1, as that provision has effect pursuant to Part 3 and Schedule 1.

**Citation and Commencement.**

26. This Ordinance may be cited as the Maternity Leave and Adoption

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<sup>k</sup> Recueil d'Ordonnances Tome XXIV, p. 238; as amended by Ordres en

Leave (Guernsey) Ordinance, 2016, and shall come into force on 1<sup>st</sup> April, 2016.

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Conseil Vol. XXXI, p. 278 and Recueil d'Ordonnances Tome XXIX, p. 406.

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SCHEDULE 1  
ADOPTION LEAVE

Section 12(1).

1. For the Part headings, substitute as appropriate –

"PART 1  
ADOPTION LEAVE",

and

"PART 2  
ADOPTION SUPPORT LEAVE".

2. For section 1, substitute –

**"Entitlement to basic adoption leave.**

1. (1) Subject to subsection (4) and section 1A, an employee intending to adopt a child is entitled to be absent from work on basic adoption leave as set out in this Ordinance if the conditions set out in subsection (2) are satisfied.

(2) The conditions are that the employee is the child's adopter, and that as soon as reasonably practicable she notifies her employer in writing of her intention to take basic adoption leave in respect of a child, specifying –

- (a) the date on which the child is expected to be placed with her for adoption (her "**expected placement date**"),



- (b) the date on which she intends her adoption leave to start, which must either be the date on which the child is placed with her for adoption, or a pre-determined date which must be no more than 14 days before her expected placement date, and no later than that date, and
- (c) the date on which she intends her adoption leave to end.

(3) Where the employer requests it, an employee must also provide her employer with evidence, in the form of one or more documents issued by the adoption agency that matched the employee with the child, of –

- (a) the date on which the employee was notified that she had been matched with the child, and
- (b) the date on which the adoption agency expects to place the child with the employee.

(4) An employee is not entitled to be absent from work on adoption leave if –

- (a) at the time of the intended adoption the employee already has parental responsibility (as defined in the Children (Guernsey and Alderney) Law, 2008) in respect of that child, or
- (b) subject to section 1A, the employee is adopting

the child other than through an adoption agency.

(5) In this Ordinance the "**adopter**" of a child means a person who has been matched with the child for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of this Ordinance; and for those purposes, a person elects to be a child's adopter, in a case where the child is matched with her and another person jointly, if she and that person agree, at the time at which they are matched, that she and not the other person will be the adopter.

(6) In this Ordinance "**adoption agency**" includes the Health and Social Services Department and an adoption agency in Alderney, Jersey, the Isle of Man, the United Kingdom and the Republic of Ireland.

(7) For the avoidance of doubt, both male and female employees are entitled to adoption leave pursuant to the provisions of this Ordinance, which should be construed accordingly.

**Entitlement to basic adoption leave: overseas adoptions.**

**1A.** (1) Where an employee has adopted a child overseas, she is entitled to adoption leave in relation to that child only where the child was the subject of an overseas adoption for the purposes of the Adoption (Designation of Overseas Adoptions) Ordinance, 1979 ("the 1979 Ordinance"); and in such a case section 1 of this Ordinance applies with the modifications set out in subsections (2) and (3).

(2) In addition to the matters specified at section 1(2), the employee must also notify her employer of the fact that the adoption is an overseas adoption for the purposes of the 1979 Ordinance, and of the date

when the child entered, or is expected to enter, Guernsey.

(3) In addition to the matters specified at section 1(3), the employee must also, where the employer requests it, provide him with evidence, of the type specified in section 2(1) of the 1979 Ordinance, that the overseas adoption has been effected, and where that evidence comprises in whole or in part a document that is not in the English language, the employee must also provide a translation of that document that conforms with the relevant requirements of section 2(2) of that Ordinance."

3. In section 2, and 5 to 10 –

(a) whenever it appears (including in section headings) for "maternity leave" substitute "adoption leave", and for "a maternity leave period" substitute "an adoption leave period", and

(b) whenever it appears for "due date" substitute "expected placement date".

4. For section 3, substitute –

**"Compulsory adoption leave.**

3. (1) An employer may not permit an employee who is the adopter of a child to work during the period of two weeks commencing with the day on which the child is placed with her for adoption ("**compulsory adoption leave period**").

(2) An employer who permits an employee to work during a compulsory adoption leave period in contravention of subsection (1) is guilty of an offence, and liable on summary conviction to a fine not exceeding level 2 on the uniform scale."

5. For section 4, substitute –

**"Commencement of adoption leave periods.**

4. (1) Subject to the provisions of this Ordinance, an employee may be absent from work at any time during an adoption leave period as defined in this section and section 5.

(2) An employee's period of basic adoption leave ("**basic adoption leave period**") commences on the date which, in accordance with section 1(2)(b), she notifies to her employer as the date on which she intends her basic adoption leave period to start; or, where her employer thereafter agrees at the employee's request to the employee starting her basic adoption leave period on another date, on that other date.

(3) An employee's period of additional adoption leave ("**additional adoption leave period**") commences on the day after her last day of basic adoption leave."

6. In section 5(1), delete from ", or until" to the end of the subsection.
7. In section 8(1)(a), for "on which childbirth occurred", substitute "the child was placed with the employee for adoption".
8. In section 11 –
- (a) in the heading, for "maternity support leave" substitute "adoption support leave",
- (b) in subsection (1) for "maternity leave" substitute "adoption leave" and for "maternity support leave" substitute "adoption support

leave",

(c) in subsection (2) for "due date" substitute "expected placement date",  
and

(d) for subsection (3), substitute –

"(3) Adoption support leave commences on the day the child is placed with the employee for adoption and continues for a period of two weeks from its commencement." .

## SCHEDULE 2

### AMENDMENT OF THE EMPLOYMENT PROTECTION LAW

#### Section 20.

1. The Employment Protection (Guernsey) Law, 1998 is amended as follows.
2. For section 9, substitute –

**"Dismissal on ground of pregnancy, childbirth or adoption, or maternity leave etc.**

9. (1) Subject to the provisions of this section, the dismissal of an employee by an employer shall be regarded for the purposes of this Part of the Law as having been unfair if –

(a) the reason for it (or, if more than one, the principal reason) is of a kind specified in subsection (4), or

(b) the reason for it (or, if more than one, the principal reason) is that the employee is redundant, and section 9 of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 ("**the Maternity Leave Ordinance**") has not been complied with.

(2) Subsection (1)(b) does not apply in relation to an employee if –

(a) it is not reasonably practicable for a reason other than redundancy for the employer or his successor to permit her to return to a job which

is both suitable for her and appropriate for her to do in the circumstances,

- (b) an associated employer offers her a job of that kind, and
- (c) she accepts or unreasonably refuses that offer.

(3) The dismissal of an employee by an employer shall also be regarded for the purposes of this Part of the Law as having been unfair if –

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in subsection (4).

(4) The reasons referred to in subsections (1)(a) and (3)(c) are –

- (a) that the employee was pregnant,
- (b) any other reason associated with the employee's pregnancy except those reasons set out in subsection (5),
- (c) that the employee has given birth to a living child, or has given birth to a child whether living or dead after 24 weeks of pregnancy,
- (d) that the employee has adopted a child within the meaning of section 12 of the Maternity Leave Ordinance, or
- (e) that the employee took or sought to take –
  - (i) maternity leave, adoption leave, maternity support leave or adoption support leave within the meaning of, and when entitled to do so under, the Maternity Leave Ordinance,
  - (ii) time off to attend an appointment to receive ante-natal care within the meaning of, and when entitled to do so under, section 14 of the Maternity Leave Ordinance.

(5) The reasons referred to in subsection (4)(b) are –

- (a) that at the effective date of termination the



employee was or would have become, because of her pregnancy, incapable of adequately doing the work which she was employed to do,

- (b) that, because of her pregnancy, she could not do or would not have been able to continue after that date to do that work without contravention (either by her or employer) of a duty or restriction imposed by or under the law of Guernsey."

3. At the end of paragraph (d) of section 12(4) delete "or"; and in paragraph (e) of section 12(4), immediately after ("**the 2009 Law**)", for "." substitute ", or" and after paragraph (e) insert –

"(f) the Maternity Leave Ordinance."

4. For paragraph (c) of section 16(1), substitute –

"(c) that he has been subjected to a detriment in contravention of section 15J, section 17 of the 2009 Law, or section 17 of the Maternity Leave Ordinance, or".

5. In section 30B, for the heading, substitute "Tribunal may join complaints."

6. In section 34(1), immediately after the definition of "independent trade union" insert the following definition –

**"Maternity Leave Ordinance"** means the Maternity Leave

and Adoption Leave (Guernsey) Ordinance, 2016 (see section 9(1)(b)), "

### SCHEDULE 3

#### AMENDMENT OF THE SEX DISCRIMINATION ORDINANCE

##### Section 21.

1. The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 is amended as follows.

2. After section 10, insert -

**"Discrimination relating to maternity leave, etc.**

**10A.** A person shall not, in relation to employment by him at an establishment in Guernsey, discriminate against a woman who –

- (a) has given birth to a living child, or has given birth to a child whether living or dead after 24 weeks of pregnancy, or has adopted a child within the meaning of section 12 of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 ("**the Maternity Leave Ordinance**"),
- (b) has given notice to her employer of her intention to be absent from work on maternity leave or adoption leave under the Maternity Leave Ordinance, or
- (c) is returning to work at the end of a period of maternity leave or adoption leave under the Maternity Leave Ordinance.

(2) Subsection (1) also applies in respect of discrimination against a woman giving notice of her intention to attend an appointment to receive ante-natal care, where she is entitled to time off work to attend that

appointment under section 14 of the Maternity Leave Ordinance."