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Ordinance of the States

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The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005

**The Employment and Discrimination Tribunal
(Guernsey) Ordinance, 2005**

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The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005

THE STATES, in pursuance of their Resolution of the 27th October, 2004^a, 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^b and all other powers enabling them in that behalf, hereby order:-.

Establishment of the Panel.

1. (1) The States shall, on the recommendation of the Commerce and Employment Department ("**the Department**"), draw up and maintain a panel to be called the Employment and Discrimination Panel ("**the Panel**").

(2) The Panel shall consist of such number of persons as in the opinion of the States is necessary for the purpose of hearing and determining complaints under the provisions of the relevant enactments.

(3) The members of the Panel shall be persons who have experience and knowledge relevant to the hearing and determination of complaints under the provisions of the relevant enactments.

(4) The States shall designate one member of the Panel as Convenor of the Panel and another as deputy Convenor thereof.

(5) The following persons may not be appointed to the Panel -

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

^b Order in Council No. XIII of 2005.

- (a) members of the States of Deliberation or the States of Election within the meaning of the Reform (Guernsey) Law 1948^c,
 - (b) members of the States of Alderney or the Chief Pleas of Sark, or
 - (c) the Industrial Disputes Officer.
- (6) Members of the Panel -
- (a) shall, subject to paragraph (b), be appointed for a term of three years (or such shorter period as the States may specify), and
 - (b) shall retire on attaining the age of 70.

Appointment and constitution of the Tribunal.

2. (1) A tribunal to be called the Employment and Discrimination Tribunal ("**the Tribunal**") shall be appointed from the membership of the Panel for the purpose of hearing and determining complaints under the provisions of the relevant enactments.

(2) The Tribunal shall (subject to the provisions of the relevant enactments) consist of three persons.

(3) The Convenor of the Panel or, if he is unavailable, the deputy Convenor thereof shall -

^c Ordres en Conseil Vol. XIII, p. 288; No. V of 1993; No. X of 1998.

- (a) from the membership of the Panel, appoint the members of the Tribunal who are to hear and determine any complaint, and
- (b) nominate one of the members so appointed to chair the Tribunal,

and for the avoidance of doubt the Convenor or deputy Convenor may so appoint and nominate himself.

(4) The provisions of subsections (2) and (3) may be amended, modified or disapplied by order of the Department under paragraph 3 of the Schedule.

Confidentiality of information.

3. (1) A member of the Panel shall not disclose or cause or permit the disclosure of any document or information which relates to the business or affairs of any person and which is acquired by him in the course of performing his functions as a member of the Panel or of the Tribunal, except -

- (a) with the consent of the person to whom the document or information relates and (if different) the person from whom it was acquired, or
- (b) to the extent that the disclosure is necessary -
 - (i) to enable him to perform his functions as a member of the Panel or of the Tribunal,

(ii) in the interests of the investigation, detection, prevention or prosecution of crime, or

(iii) to comply with an order of a court.

(2) A person who discloses or causes or permits the disclosure of any document or information in contravention of subsection (1) is guilty of an offence and liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, or

(b) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

Power of Convenor and Tribunal to seek directions.

4. (1) The Convenor of the Panel (or, if he is unavailable, the deputy Convenor thereof) and the Tribunal may, if they believe that it would assist them in the proper and lawful performance of their respective functions, apply to the Royal Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court.

(2) On an application under subsection (1) the Royal Court may make such order, on such terms and conditions, as it thinks fit.

(3) An appeal from an order of the Royal Court under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961^d ("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.

Procedure and powers of Tribunal.

5. (1) The Schedule, which is entitled "The Tribunal: procedure and powers" and which lays down -

- (a) the procedure to be followed by, and the powers to be available to, the Tribunal in hearing and determining a complaint under the relevant enactments, and
- (b) other ancillary matters relating to the Tribunal and its proceedings and powers,

shall have effect.

(2) The provisions of the Schedule are subject to any contrary provision contained in a relevant enactment.

Appointment of Secretary.

6. The Department shall -

- (a) appoint a Secretary to the Tribunal, and such number of deputy Secretaries, on such terms and conditions, and

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

(b) provide such other officers and facilities,

as the Department thinks fit.

Interpretation.

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

"**complaints**" includes appeals and other proceedings,

"**Convenor**" means the Convenor of the Panel designated under section 1(4),

"**costs of a hearing**" : see paragraph 6(3) of the Schedule,

"**deputy Convenor**" means the deputy Convenor of the Panel designated under section 1(4),

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

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

"**Industrial Disputes Officer**" means the Industrial Disputes Officer appointed by the States under section 1 of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993^e, and includes the Deputy

^e Order in Council No. I of 1993.

Industrial Disputes Officer appointed under section 2 of that Law,

"Panel" means the Employment and Discrimination Panel established under section 1,

"prescribed" means prescribed by order of the Department,

"relevant enactment" means any enactment which provides for a complaint to be heard and determined by the Tribunal,

"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, and includes any deputy Secretary so appointed,

"Tribunal" means the Employment and Discrimination Tribunal established under section 2.

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

General provisions as to subordinate legislation.

8. (1) An order of the Department or Royal Court under this Ordinance -

(a) may be amended or repealed by a subsequent order hereunder,

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the Department or the Royal Court to be necessary or expedient,
- (c) may make provision for the payment of fees, and
- (d) 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.

Savings and transitional provisions.

9. (1) Any reference in an enactment, statutory instrument or rule of court to a provision of the Law of 1998 repealed by the Law of 2005 and re-enacted (with or without modification) by this Ordinance shall be construed as a reference to the provision re-enacted.

(2) Any subordinate legislation made or other thing done under a provision of the Law of 1998 repealed by the Law of 2005 and re-enacted (with or without modification) by this Ordinance, or having effect as if so made or done, which could have been made or done under the provision re-enacted, has effect as if made or done under that provision.

(3) Notwithstanding the provisions of subsections (1) and (2), the Law of 1998 shall apply in relation to a complaint against an employer under section 17(1)(a), (b) or (c) of the Law of 1998 which was presented to the Department before the date of commencement of this Ordinance in all respects as that Law had effect immediately before the commencement of the Law of 2005.

(4) In this section -

"the Law of 1998" means the Employment Protection (Guernsey)

Law, 1998^f, and

"**the Law of 2005**" means the Employment Protection (Guernsey) (Amendment) Law, 2005.

Citation.

10. This Ordinance may be cited as the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.

Commencement.

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

^f 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).

SCHEDULE
THE TRIBUNAL: PROCEDURE & POWERS

Section 5

Voting in Tribunal.

1. (1) Each member of the Tribunal has, subject to subparagraph (2), one vote, and the decisions of the Tribunal shall be taken by a simple majority.

(2) The person chairing the Tribunal has an original vote and also, where there is an equality of votes, a casting vote.

(3) This paragraph is subject to the provisions of any order of the Department under paragraph 3.

Procedure in hearings before Tribunal.

2. Subject to the provisions of any order of the Department under paragraph 3, where a Tribunal is appointed to hear and determine a complaint under the relevant enactments -

(a) the Tribunal shall afford the parties a reasonable opportunity of appearing and being heard or, if all parties so elect, of submitting a statement in writing to the Tribunal,

(b) the Tribunal may admit any evidence given for the purposes of the hearing and determination of the complaint notwithstanding any rule of law relating to hearsay or otherwise as to the admissibility of evidence,

(c) the parties are entitled to be present during any

hearing by the Tribunal of representations made in person, and for the purposes of this paragraph a party may be represented by any person, whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified, to represent the party,

- (d) the Tribunal shall afford the parties a reasonable opportunity of replying to the representations made by the other party, either by appearing and being heard in person or (if the original representations were made in writing) by a statement in writing,
- (e) the Tribunal shall consider all representations and replies submitted to it by the parties,
- (f) the Tribunal may at any time require either party to furnish further particulars in writing within such time as it may direct with regard to any question referred to it and shall afford the other party a reasonable opportunity of replying in writing,
- (g) the Tribunal may call for such documents and examine such persons (including the parties) on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the Tribunal,

- (h) the parties may, if authorised to do so by the Tribunal, cause a summons to be served on any person, in the same manner as that in which a summons may be served in a civil action before the Royal Court, summoning that person to attend any hearing of the Tribunal to give evidence or produce any document likely to assist the Tribunal in determining any question before it, and a person so summoned is under a like obligation as to the giving of any evidence or the production of any document as if he were summoned to give the evidence or produce the document in a civil action before the Royal Court,
- (i) the Tribunal may adjourn any hearing from time to time as it thinks fit,
- (j) if it is proved to the satisfaction of the Tribunal that the parties have been notified of the place, date and time of a hearing, and one of the parties fails to appear at the hearing, the Tribunal may proceed to determine any matter in dispute in the absence of that party,
- (k) the decision of the Tribunal shall be in writing, signed by the person chairing the Tribunal and transmitted as soon as reasonably practicable to the parties,
- (l) the Tribunal shall cause a notice of its decision to be displayed in the Royal Court House for a period of seven days,

- (m) the Tribunal may, subject to the above provisions, and subject also to the provisions of any order of the Department under paragraph 3 -
 - (i) determine its own procedure, and
 - (ii) give such directions, subject to such terms and conditions, as it thinks fit for the purposes of the hearing and determination of the complaint.

Orders as to procedure, etc of Tribunal.

3. (1) The Department may by order make such provision as it thinks fit in relation to the appointment, constitution, proceedings and powers of the Tribunal including, without limitation, provision as to -

- (a) the institution, presentation and notification of complaints under the relevant enactments,
- (b) the reference of complaints under the relevant enactments to the Tribunal,
- (c) the hearing and determination of complaints under the relevant enactments by the Tribunal,
- (d) procedure (including the method of pleading, the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given),
- (e) the costs of a hearing, the powers of the Tribunal in

respect thereof (including provision as to the payment of costs on a full or partial indemnity basis, the giving of security for costs, the taxation of costs and the costs of legal representation of any of the parties) and the payment and recovery thereof,

(f) fees, expenses and allowances (including the expenses and allowances of members of the Tribunal) and the payment and recovery thereof,

(g) the summoning of witnesses and the service of documents,

(h) the hearing and determination of complaints under the relevant enactments or of any specified class or description thereof -

(i) by the Tribunal constituted by a single member,

(ii) on the basis of written representations,

(i) the performance by the Tribunal of any of its functions under the relevant enactments, and

(j) ancillary matters.

(2) An order under this paragraph may, without limitation -

(a) regulate procedure in connection with matters

preparatory to hearings (including the publication of notice of hearings) and subsequent to hearings (including the publication, interpretation and enforcement of decisions and reasons for decisions), as well as in connection with the conduct of hearings,

- (b) make provision for the striking out of complaints (or of any claim or application in a complaint), and
- (c) make provision as to the representation, and joining, of parties.

(3) An order under this paragraph may amend, modify or disapply -

- (a) any provision of section 2(2) and (3) of this Ordinance, and
- (b) any provision of this Schedule.

Hearings to be in public.

4. (1) A hearing and every part of a hearing before the Tribunal shall be held in public unless the Tribunal directs otherwise.

(2) The Tribunal may at any time exclude any person from a hearing or any part thereof.

Powers of Tribunal as to summoning witnesses, etc.

5. The Tribunal has, for the purposes of hearing and determining a complaint under the relevant enactments, the same powers as the Royal Court in

respect of -

- (a) the attendance and examination of witnesses,
- (b) the administration of oaths or affirmations to witnesses,
- (c) the production of documents and exhibits,

and a summons in relation to any of these matters signed by the person chairing the Tribunal is equivalent to a formal process issued in that behalf in an action before the Royal Court.

Costs.

6. (1) The Tribunal may, subject to the provisions of subparagraphs (4) and (5), and subject also to the provisions of any order of the Department under paragraph 3, order that the whole or any part of the costs of a hearing shall be paid by one or more of the parties in such amount or proportion and on such basis as the Tribunal may direct.

- (2) An order for costs under subparagraph (1) -
 - (a) is enforceable as a judgment debt by the person in whose favour the order was made, and
 - (b) 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 order until the order is satisfied, and the interest may be recovered by the person in whose favour the order was made as part of the award of costs.

(3) The expression "**costs of a hearing**" (without prejudice to the generality of the expression) includes -

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs,
- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding and conduct of the hearing and the determination of the complaint incurred by the States (other than as a party to the hearing), and
- (c) the costs, fees, expenses and allowances of the Tribunal and the members thereof.

(4) The Department may by order prescribe maximum scales of costs, fees and expenses in relation to the costs of hearings and, where the Department so prescribes a scale in relation to any proceeding or matter, an award of the Tribunal under subparagraph (1) in relation to the costs of such a proceeding or matter shall not exceed the amount prescribed.

(5) The Tribunal may not order -

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

- (a) the payment of costs on a full or partial indemnity basis,
- (b) the giving of security for costs,
- (c) the taxation of costs, or
- (d) the payment of the costs of legal representation of any of the parties,

except in accordance with the provisions of an order of the Department under paragraph 3.

(6) The provisions of this paragraph do not apply in relation to the Royal Court and are accordingly without prejudice to the powers of the Royal Court in relation to the costs of -

- (a) an appeal or reference to it under the provisions of the relevant enactments, or
- (b) an application to it under section 4 of this Ordinance.

Offences in relation to hearings, etc.

7. (1) A person who -

- (a) in proceedings before the Tribunal, or in making any statement or providing any information or document to the Secretary or the Tribunal when acting in the

performance or purported performance of their respective functions under this Ordinance or the relevant enactments -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (iii) 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
 - (iv) 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,
- (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend,
- (c) on attending before the Tribunal as a witness, fails, when legally required to do so -

- (i) to take the oath or affirmation,
 - (ii) to produce any document in his possession, custody or power, or
 - (iii) to answer any question put to him, or
- (d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court, or
- (e) discloses, except for the purposes of legal proceedings or with other lawful excuse, any matter which came to his knowledge by reason of his being present before the Tribunal when the Tribunal was sitting in camera,

is guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

Allowances and expenses of members of Tribunal.

8. There shall be paid to the members of the Tribunal such allowances as the Department may determine together with the travelling and other expenses incurred by them in connection with the performance of their functions under this Ordinance and the relevant enactments.