

# PROJET DE LOI

ENTITLED

## **The Employment and Equal Opportunities Service (Guernsey) Law, 2023**

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## The Employment and Equal Opportunities Service (Guernsey) Law, 2023

THE STATES, in pursuance of their Resolution of the 17<sup>th</sup> July 2020<sup>a</sup>, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART I

#### OFFICE OF THE DIRECTOR

##### *Establishment of Office of the Director*

##### **Establishment of Office of the Director.**

1. (1) The Committee shall establish an office to be known as the Office of the Director of the Employment and Equal Opportunities Service ("**the Office of the Director**").

(2) The holder of that office will be known as the Director of the Employment and Equal Opportunities Service (the "**Director**").

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<sup>a</sup> Article XV of Billet d'État No. XV of 2020.

(3) Except as provided in subsections (4), (5) and (6), the Director shall be appointed by the States, after recommendation by the Committee.

(4) In the event that the office of Director is vacant at any particular time, the Committee may appoint a person to be the Director on a temporary basis which temporary appointment will end when either -

- (a) an appointment is made by the States under subsection (3),
- (b) the temporary appointment is terminated by the Committee under subsection (8), or
- (c) at the expiration of a period of six months from the time the temporary appointment was made,

whichever is the earlier.

(5) Save for section 6, the provisions of this Part apply to a person appointed as Director under a temporary appointment as they apply to the Director.

(6) For the avoidance of doubt, the same person who has been appointed as Director under a temporary appointment may subsequently be appointed by the States under subsection (3).

(7) The following persons may not hold the office of Director -

- (a) members of the States or of the States of Election, or
- (b) members of the Employment and Discrimination Panel.

- (8) The appointment of the Director -
- (a) may be periodic or for a fixed term,
  - (b) is subject to such terms and conditions as the Committee may from time to time think fit, and
  - (c) may be varied or terminated at any time by the States, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(9) The Director must, subject to the terms and conditions of the Director's appointment, exercise the functions assigned or transferred to the Director by or under this Law and any other enactment.

(10) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> -

- (a) the Office of the Director is a public office, and
- (b) the Director is an office holder.

**Independence of the Director.**

2. (1) Subject to subsection (2), the Director is not subject to directions of any kind from any Committee or member of the States as to the manner in which the Director is to exercise the Director's functions under any enactment.

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<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 478; this enactment has been amended.

(2) When carrying out the functions of the Director, the Director must take into account -

(a) any relevant guidance given by resolution of the States on the recommendation of the Committee of a general or specific nature, and

(b) any code of practice or guidance issued by the Committee under any of the employment and equal opportunities enactments.

(3) Before making a recommendation to the States under subsection (2)(a) or issuing a code of practice or guidance under the employment and equal opportunities enactments, the Committee must consult with the Director in connection with the reasons for and the nature of the recommendation, code of practice or guidance.

(4) For the avoidance of doubt, nothing in this Law affects the Committee's mandated responsibilities, including but not limited to for the development and implementation of States' policies relating to equality and social inclusion, employment relations, labour market legislation and practices and industrial relations.

### **Salary of Director.**

3. (1) The Director will be paid such salary or fees and other allowances as the Committee may decide.

(2) The Committee must ensure that adequate resources are provided to the Director so that the Director can carry out the functions of the Director created or arising under this Law or any other enactment.

**Appointment of staff.**

4. (1) The Director may, subject to the approval of the Committee -
  - (a) appoint such officers, and
  - (b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as the Director thinks necessary for the exercise of the Director's functions.

(2) For the avoidance of doubt, any officer or other person appointed by the Director under this section who is also an employee will be a civil servant and therefore subject to the recruitment processes of the States.

**Delegation of functions.**

5. (1) The Director may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of the Director's functions to be exercised in the Director's name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this section is for all purposes exercised by the Director, and every decision taken or other thing done by a delegate pursuant to such arrangement has the same effect as if taken or done by the Director.

(3) An arrangement under this section for the exercise of a function by a delegate -

- (a) may be varied or terminated at any time by the Director, but without prejudice to anything done

pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Director while the appointment subsists.

(4) This section and section 6 are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991.

**Appointment of Deputy Director.**

6. (1) Without prejudice to sections 4 and 5, the Director may, subject to such terms and conditions as the Director thinks fit, appoint any person as Deputy Director with authority to exercise the Director's functions during any period during which the Director is unavailable.

(2) If the Director has not appointed a Deputy Director under subsection (1) and the Director becomes unavailable, the Committee may, subject to such terms and conditions as the Committee thinks fit, appoint a person as Deputy Director with authority to exercise the Director's functions during the period during which the Director is unavailable.

(3) A function exercised by a Deputy Director is for all purposes exercised by the Director, and every decision taken or other thing done by a Deputy Director pursuant to an appointment has the same effect as if taken or done by the Director.

(4) Unless the contrary intention appears, a reference in this Law to "**Director**" includes a reference to an appointed Deputy Director exercising the Director's functions.

- (5) An appointment of a Deputy Director under this section -
- (a) may be varied or terminated at any time by the Director or the Committee, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
  - (b) does not prevent the exercise of the function by the Director while the appointment subsists.

**Reports.**

7. (1) Whenever the Committee directs, the Director must submit to the Committee a report on the exercise of the Director's functions in such form and in respect of such period as the Committee may specify.

- (2) The Committee -
- (a) must submit a report made by the Director under subsection (1) to the States, and
  - (b) may at the same time or at any other time submit its own report to the States on the exercise by the Director of the Director's functions.

**Financial and accounting provisions.**

8. (1) All fees, civil penalties and similar sums received by the Director in the exercise of the Director's functions must be paid by the Director to the Committee for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that the Committee directs otherwise.

(3) The Director must -

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) submit to the Committee, whenever the Committee may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Director.

*Functions and powers of the Director*

**Functions of Director.**

9. (1) The functions of the Director are referred to in this Law as "**general functions**" and "**statutory functions**".

(2) The general functions of the Director are -

- (a) to promote equal opportunities and work towards the elimination of discrimination,
- (b) to improve employment relations and work towards the elimination of unlawful employment practices,
- (c) to publicise practices which the Director considers to be good in the fields of employment, equal opportunities, disability and inclusion,

- (d) to assist in the resolution of employment disputes,
  - (e) where the Committee requests, to provide the Committee with reports, advice, information and assistance on any matter connected with the promotion of equal opportunities, the elimination of discrimination or employment issues,
  - (f) to prepare and submit to the Committee, either at the request of the Committee or of the Director's own motion, recommendations and schemes for measures (including the revision of legislation) that may support or promote any of the functions of the Director, and
  - (g) all such other functions as are provided for by Ordinance of the States.
- (3) The statutory functions of the Director are -
- (a) the functions transferred to the Director by section 10, and
  - (b) any functions assigned to the Director, or to the Employment and Equal Opportunities Service, by or under any enactment, including under the Prevention of Discrimination (Guernsey) Ordinance, 2022<sup>c</sup> and the

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<sup>c</sup> Ordinance No. XVIII of 2022.

functions assigned by that Ordinance include but are not limited to -

- (i) the provision of pre-complaint conciliation services under section 41 and of conciliation services under section 47,
- (ii) the bringing of proceedings under Part IX,
- (iii) the issue of non-discrimination notices under section 60 and the establishment and maintenance of a register of non-discrimination notices under section 64,
- (iv) the imposition of financial penalties under section 61, and
- (v) the service of information notices under section 65.

(4) For the avoidance of doubt, where the Committee appoints the Director to a position, or authorises the Director in any behalf, by or under any enactment, the functions of that appointment or authorisation are statutory functions assigned to the Director by or under an enactment.

(5) The Director must carry out the functions of the Director with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with the provisions of this Law and any other enactment.

**Transfer of statutory functions to Director.**

10. (1) The following functions that would, apart from this section, be exercisable by the Committee, or an officer of the Committee, are transferred to the Director -

(a) under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005<sup>d</sup> -

(i) the countersigning of agreements under section 41(2)(b),

(ii) the provision of conciliation services under section 43,

(iii) the issue of non-discrimination notices under section 55,

(iv) the maintenance of a register of non-discrimination notices under section 57,

(v) the power to obtain information under section 58, and

(vi) the requirement to keep records of proceedings before the Tribunal under section 66,

(vii) the requirement to cooperate with the Tribunal under section 67,

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<sup>d</sup> Ordinance No. XXXI of 2005; this enactment has been amended.

- (b) under the Minimum Wage (Guernsey) Law, 2009<sup>e</sup> -
  - (i) the provision of conciliation services under section 11, and
  - (ii) the power to appoint officers under section 13,
- (c) under the Employment Protection (Guernsey) Law, 1998<sup>f</sup> -
  - (i) the countersigning of agreements under section 19(3)(c),
  - (ii) the provision of conciliation services under section 20,
  - (iii) the requirement to keep records of proceedings before the Tribunal under section 38, and
  - (iv) the requirement to cooperate with the Tribunal under section 39.

(2) For the purpose of the exercise of the functions transferred to it by this section the Director is subject to all of the duties previously imposed on the Committee.

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<sup>e</sup> Order in Council No. I of 2010; this enactment has been amended.

<sup>f</sup> Ordres en Conseil Vol. XXXVIII, p. 239; this enactment has been amended.

(3) The Schedule (consequential and related amendments) has effect.

**Ancillary powers of Director.**

11. (1) Subject to subsection (2), the Director may do anything that appears to the Director to be necessary for, or expedient to, the exercise of the Director's functions including, without limitation, power -

- (a) to require the production of or otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as the Director thinks fit,
- (b) to require any person to provide an explanation of any document, accounts or information,
- (c) to require any person to provide any additional information known to that person which might reasonably be needed,
- (d) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents,
- (e) to appoint any person or body to provide advice in relation to the exercise of any of the Director's functions, and

(f) to request advice from His Majesty's Procureur in relation to the exercise of any of the Director's functions.

(2) The power under subsection (1) to require anything referred to in paragraphs (a), (b) or (c) of that subsection –

(a) may be exercised only where the Director reasonably believes that a person is committing or has committed an act which is prohibited by or under any of the employment and equal opportunities enactments and,

(b) may not be exercised so as to require a person to produce any document, accounts or information which he or she could not be compelled to produce in civil proceedings before the Royal Court.

(3) For the purposes of exercising the Director's functions the Director may enter into any contract.

**Power of Director to apply for directions.**

12. (1) The Director may, if the Director believes it would assist in the proper performance of the Director's 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) Where the Director makes an application under subsection (1) in respect of a matter, the Director may delay the doing of any thing required by this Law in respect of that matter, pending the outcome of that application.

(4) 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.

(5) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>8</sup> (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.

**Fees payable to the Director.**

13. (1) The Committee may prescribe -
- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of the Director's functions,
  - (b) the interest payable in the event of default in the due payment of fees, and
  - (c) the persons by whom such fees and interest are to be payable.

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<sup>8</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

(2) For the avoidance of doubt, fees may be payable in respect of any service provided, work undertaken or time expended by the Director or any person when carrying out the Director's functions.

(3) The Director may refuse to exercise the Director's functions in any particular case if the fees payable have not been paid.

## PART II GENERAL PROVISIONS

### **Duty of confidentiality not broken by disclosure to Director.**

14. Subject to section 16, a requirement imposed by section 11 has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

### **Confidentiality.**

15. (1) Any document or information which relates to the business or affairs of any person and which is acquired by the Director in carrying out the functions of the Director must be treated as confidential.

(2) Any document or information communicated to the Director by a Committee of the States must, if that Committee so requests, be treated as confidential.

(3) The Director must not disclose or cause or permit the disclosure of any confidential document or information except in accordance with the provisions of this Law, any other enactment or any rule of law.

(4) Subject to section 16, any document or information which is confidential under subsection (1) or (2) may be disclosed -

- (a) with the consent of the person to whom the document or information relates and, if different, the person or Committee from whom it was acquired,
- (b) to the extent that it appears to the Director to be necessary -
  - (i) in relation to the investigation, detection or prevention of crime, to an officer of police or a customs officer, or
  - (ii) to comply with an order of a court or tribunal.

(5) Any person who discloses or causes or permits the disclosure of any document or information in contravention of this section 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 of up to level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

**Legal professional privilege, protection from self-incrimination and data protection.**

16. Nothing in this Law -

- (a) authorises a disclosure, in contravention of the provisions of the Data Protection (Bailiwick of Guernsey) Law, 2017<sup>h</sup>, of personal data, or
- (b) limits a right to decline to produce or deliver documents or other information to the Director on the ground of -
  - (i) legal professional privilege, or
  - (ii) any rule against self-incrimination.

**Appeals.**

17. (1) Without prejudice to any specific right of appeal in any enactment, a person directly affected by a decision of the Director may appeal to the Court to set aside or modify that decision.

(2) The grounds of appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

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<sup>h</sup> Order in Council No. VI of 2018; this enactment has been amended.

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section must be instituted -

(a) within a period of two months immediately following the date of the Director's decision,

(b) by summons served on the Director stating the grounds and material facts on which the appellant relies.

(4) The Director may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application, the Court may -

(a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just, and

the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>i</sup>.

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<sup>i</sup> O.R.C. No. IV of 2007; this enactment has been amended.

(5) On an appeal under this section the Director shall have the burden of proof and the appellant the final right of reply.

(6) On an appeal under this section the Court may -

(a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(7) On an appeal under this section against a decision of the Director, the Court may, on the application of the appellant or the Director or of its own volition, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(8) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(9) In this section, the "**Court**" means the Royal Court sitting as an Ordinary Court.

**Exclusion of liability.**

18. Save -

(a) as provided by section 15(5), or

(b) in the case of the breach by the Director of any contract entered into under section 11(2),

no liability is incurred by -

- (i) the Director, including any person appointed as the Director under a temporary appointment,
- (ii) any person to whom the Director has delegated any function,
- (iii) any person appointed as Deputy Director under section 6, or
- (iv) any officer or servant of the Director,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

**Proof of documents.**

19. (1) In any legal proceedings (including proceedings under this Law) subsection (2) applies in relation to any document purporting to be -

- (a) issued by or on behalf of the Director, or
- (b) signed by the Director, by any of the Director's officers or servants or by any person to whom the Director has delegated authority to sign documents of that description.

(2) The document -

- (a) will be received in evidence,
- (b) unless the contrary is proved, is deemed -

- (i) to be the document which it purports to be, and
  - (ii) to have been issued by or on behalf of the Director or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of the signatory's identity, signature or official capacity, and
- (c) is evidence of the matters stated in that document.

**Retention of copies of records in electronic form.**

20. (1) Documents received by or issued by or on behalf of the Director under or for the purposes of this Law (including documents in electronic form or sent by electronic means) may, if a copy of the document is retained in electronic form, be destroyed by the Director -

- (a) in the case of a document in electronic form and sent by electronic means, at any time, and
  - (b) in any other case, on the expiration of a period of three years following the date of the document's receipt or issue, as the case may be.
- (2) This section is without prejudice to -
- (a) any other provision of this Law (or any regulations made under it) relating to documents in electronic form or sent by electronic means, and

- (b) the Electronic Transactions (Guernsey) Law, 2000<sup>j</sup>.

**Service of notices and documents.**

21. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law may be given to or served on -

- (a) an individual ("A"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,
- (b) a body corporate with a registered office in Guernsey, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,
- (c) a body corporate without a registered office in Guernsey, by being left at, or sent by post to -
  - (i) its principal or last known principal place of business in Guernsey, or
  - (ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (d) an unincorporated body -

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<sup>j</sup> Order in Council No. VIII of 2000; this enactment has been amended.

(i) by being given to or served on any partner, member of the committee or other similar governing body, director or other similar officer in accordance with subsection (a), or

(ii) by being left at, or sent by post to -

(A) the body's principal or last known principal place of business in Guernsey, or

(B) if there is no such place, its principal or last known principal place of business elsewhere, or

(iii) by being transmitted to its relevant electronic address,

(e) the Director or the Committee -

(i) by being left at, or sent by post to, its respective principal office in Guernsey, or

(ii) by being transmitted to its relevant electronic address.

(3) In this section -

(a) "**relevant electronic address**" means an electronic address -

- (i) with which, in the reasonable opinion of the sender, the person concerned has a personal, business or other connection, and
- (ii) a document transmitted to which is likely to come to the attention of the person concerned, and

(b) "**transmitted**" means transmitted by email or other similar means which produce or enable the production of a document containing the text of the communication.

(4) If a person notifies the Director of an address, or an electronic address, for service within Guernsey for the purposes of this Law, any document to be given to or served on that person may be given or served by being left at, or sent by post, or transmitted to that address or electronic address, as the case may be.

(5) If service of a document cannot, after reasonable enquiry, be effected under 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.

(6) Subsections (1), (3) and (4) are without prejudice to any other lawful method of service.

(7) Despite the provisions of this section and of any other rule of law in relation to the service of documents, no document to be given to or served on the Director, the Committee or any other Committee of the States of Guernsey under

or for the purposes of this Law will be deemed to have been given or served until it is received.

(8) This section is without prejudice to the Electronic Transactions (Guernsey) Law, 2000.

*Offences and penalties*

**Offences.**

22. (1) A person is guilty of an offence if that person does any of the following for purposes connected with the provisions of this Law -

- (a) makes a statement that the person 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 causes to be produced, any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (d) recklessly produces, or recklessly causes or permits to be produced, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

- (e) wilfully alters, suppresses, conceals or destroys a document required to be produced under section 11, or
- (f) intentionally delays or obstructs the Director in the exercise of any power conferred by this Law.

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

**Criminal liability of officers.**

23. (1) This section applies to any offence under this Law.
- (2) If an offence committed by a body corporate is proved -
- (a) to have been committed with the consent or connivance of an officer of the body, or
  - (b) to be attributable to any neglect on the part of such an officer,

the officer as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(3) In this section "**officer**", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) For the purposes of this section, a person is deemed to be a director of a body corporate if that person is a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.

(5) Where an offence under this Law 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 or 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.

**Defence of due diligence.**

24. In any proceedings for an offence under section 22 or 23 it is a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused and by any person under the control of the accused.

**Discretionary financial penalty.**

25. (1) Where the Director is satisfied that a person has, without reasonable excuse, failed to answer any question, furnish any information or produce

any document when required to do so under section 11 within the specified time period (if any), the Director may (subject to the provisions of this section and section 26) impose on that person a financial penalty in respect of the failure of such amount as the Director considers appropriate, but not exceeding £10,000.

(2) In deciding whether or not to impose a penalty under this section, and, if so, the amount thereof the Director must take into consideration the following factors -

- (a) whether the failure was brought to the attention of the Director by the person concerned,
- (b) the seriousness of the failure,
- (c) whether or not the failure was inadvertent,
- (d) what efforts, if any have been made to rectify the failure and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned and to third parties of imposing a penalty, and
- (f) the penalties imposed by the Director under this section in other cases (if any).

(3) Any financial penalty imposed under this section is recoverable as a civil debt.

(4) Where the Director proposes to impose a financial penalty, the Director must notify in writing the person on whom the penalty is to be imposed of -

- (a) the proposed penalty, and the reasons for the same,
- (b) the date on which it is proposed, subject to sections 17 and 26, to impose the penalty, which must not be less than 21 days after the date of the notice, and
- (c) that person's right to make written representations to the Director under section 26.

(5) Where the Director imposes a financial penalty, the Director must -

- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
- (b) include in the notice a statement of the right of appeal under section 17.

(6) No financial penalty may be imposed on a person under this section in circumstances where a discretionary financial penalty has already been imposed on the person by the Director under any other enactment (including, but not limited to, section 61 of the Prevention of Discrimination (Guernsey) Ordinance, 2022) in respect of the same facts or circumstances.

**Representations prior to financial penalty.**

26. (1) The person on whom a notice is served under section 25(4) may make written representations to the Director concerning the proposed financial penalty within 14 days of the date of the notice.

(2) If the person in question exercises their right under subsection (1) the Director -

(a) must consider their representations, and

(b) may decide to -

(i) impose the penalty,

(ii) impose a penalty in a lesser amount,

(iii) withdraw the penalty, or

(iv) postpone the date for imposing the penalty,

but in any event the Director must inform that person of the decision in writing, and the Director's reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed.

(3) Without prejudice to section 17(7), and for the avoidance of doubt, where the Director has imposed a financial penalty under section 25 the Director may not seek to recover payment of that penalty until -

(a) two months immediately following the date of the notice of the penalty issued under section 25(5)(a), or

- (b) if an appeal is instituted within that period, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

*Ordinances, regulations etc*

**Power to amend Law.**

- 27. (1) The States may by Ordinance -
  - (a) amend sections 9, 10, 11, 29 and the Schedule, where it appears to the States to be necessary or expedient to do so for the purpose of -
    - (i) enabling the Director more effectively to perform any of the Director's functions,
    - (ii) providing for additional general functions of the Director under section 9(2)(g),
    - (iii) providing for any functions under the employment and equal opportunities enactments to be transferred to the Director, including in order to reflect any change to those enactments, or

(iv) achieving the objectives of the Prevention of Discrimination (Guernsey) Ordinance, 2022,

(b) make such provision as they think fit for the purpose of carrying the provisions of this Law into effect.

(2) For the avoidance of doubt, an Ordinance may include, without limitation -

(a) subject to subsection (3), provision as to the creation and punishment of offences in respect of contraventions of the Ordinance,

(b) provision as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences, and

(c) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(3) The power conferred by subsection (2) to make provision as to the creation and punishment of offences does not include power -

(a) to provide for offences to be triable only on indictment,

(b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being

imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>k</sup>, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

**Regulations: consultation with Director.**

28. (1) The Committee must consult with the Director before making any regulations under this Law, but a failure so to consult shall not invalidate any regulations made under this Law.

(2) Any regulations made under this Law must be laid before a meeting of the States as soon as possible after being made; and will, if at that or the next meeting the States resolve to annul the regulations, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

*Miscellaneous*

**Interpretation.**

29. (1) In this Law, unless the context requires otherwise -

"**the Committee**" means the Committee for Employment and Social Security,

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

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<sup>k</sup> Order in Council No. XVIII of 2009; this enactment has been amended.

"**Director**": see section 1,

"**electronic address**": see section 21,

"**Employment and Discrimination Panel**" means the Employment and Discrimination Panel established under section 1 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005<sup>1</sup>,

"**prescribed**" means prescribed by regulations of the Committee,

"**relevant electronic address**": see section 21,

"**transmitted**": see section 21,

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

(2) In this Law, "**employment and equal opportunities enactments**" means -

- (a) the Prevention of Discrimination (Guernsey) Ordinance, 2022,
- (b) the Employment Protection (Guernsey) Law, 1998,

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<sup>1</sup> Ordinance No. XXX of 2005; this enactment has been amended.

- (c) the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005,
- (d) the Minimum Wage (Guernsey) Law, 2009,
- (e) the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993<sup>m</sup>,
- (f) the Maternity and Adoption Leave (Guernsey) Ordinance, 2016<sup>n</sup>,
- (g) the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, and
- (h) the Conditions of Employment (Guernsey) Law, 1985<sup>o</sup>.

**Extent.**

30. This Law extends to the Islands of Guernsey, Herm and Jethou.

**Citation.**

31. This Law may be cited as the Employment and Equal Opportunities Service (Guernsey) Law, 2023.

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<sup>m</sup> Ordres en Conseil Vol. XXXIV, p. 267; this enactment has been amended.

<sup>n</sup> Ordinance No. III of 2016; this enactment has been amended.

<sup>o</sup> Ordres en Conseil Vol. XXIX, p. 42; this enactment has been amended.

**Commencement.**

32. This Law will come into force on the day appointed by regulations of the Committee; and different dates may be appointed for different provisions and for different purposes.

## SCHEDULE

Section 10(3)

### CONSEQUENTIAL AND RELATED AMENDMENTS

#### **Consequential and related amendments.**

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

- (a) in sections 21(3), 22(6), 23(2), 24(3) and 38(2)(a), for "Committee" substitute "Director",
- (b) in section 41(2)(b), for "an officer of the Committee" substitute "the Director",
- (c) in section 43 -
  - (i) in subsection (1) for "Committee, which shall" substitute "Director, who shall",
  - (ii) for subsection (1)(a) and (b) substitute -
    - "(a) use best endeavours to settle the complaint by giving such advice and assistance as the Director thinks necessary or expedient or by conciliation, and
    - (b) remit the complaint to the Secretary -

- (i) if in the Director's 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 the Director (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 the Director's opinion conciliation or negotiations are in progress with a view to a settlement.",
  - (iii) in subsection (2), for "Where the Committee remits" substitute "Where the Director remits",
  - (iv) in subsection (3) for "Committee" substitute "Director", and
  - (v) in subsection (4), for "Committee or any member or officer thereof" substitute "Director or any officer thereof".
- (d) in section 55 -
- (i) in each place that it occurs, for "Committee" substitute "Director",

- (ii) in subsection 5, for "it has first" substitute "the Director has first",
  - (iii) in subsection 5(a) for "it is minded" substitute "the Director is minded" and for "it contemplates" substitute "the Director contemplates",
- (e) in section 56(7) in both places it occurs, for "Committee" substitute "Director",
- (f) in section 57 -
  - (i) in subsection (1) for "Committee" substitute "Director",
  - (ii) in subsection (2)(b), in both places it occurs, for "Committee" substitute "Director",
  - (iii) in subsection (3) for "Committee" substitute "Director",
  - (iv) in subsection (4) for "Committee" substitute "Director",
- (g) in section 58(1)—
  - (i) in both places it occurs, for "Committee" substitute "Director", and

- (ii) immediately before "believes" insert "reasonably",
- (h) in section 60(2)(b), for "Committee" substitute "Director",
- (i) in section 62, after "of the Committee" insert "or the Director",
- (j) in section 63(1), in the appropriate place insert -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023,"

- (k) in section 65(1), after paragraph (e) insert the following paragraph -
  - "(f) on the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey,"
- (l) in sections 65(2) and 65(5), after each occurrence of "the Tribunal" insert ", the Director",
- (m) in section 66 for "Committee" substitute "Director",
- (n) in section 67 -
  - (i) in the title, after "Committee" insert "and Director", and

- (ii) for "The Committee and its members and officers shall, subject to the provisions of section 43(4)" substitute "The Committee and its members and officers and the Director and the Director's officers shall, subject in the case of the Director and the Director's officers to the provisions of section 43(4)".

(2) The Minimum Wage (Guernsey) Law, 2009 is amended as follows -

- (a) in section 11 -

- (i) in subsection (1) -

- (A) for "Committee, which shall use its best endeavours" substitute "Director, who shall use best endeavours", and

- (B) for "it thinks necessary" substitute "the Director thinks necessary",

- (ii) in subsection (2), in both places it occurs, for "Committee", substitute "Director",

- (b) for section 13(1) substitute -

"(1) The Director may appoint officers to act for the purposes of this Law, and for the avoidance of doubt, the Director may be appointed as one such officer."

(c) in section 32(1) -

(i) in the appropriate place insert the following definition -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023," and

(ii) in the definition of "**officer**", for "Committee" substitute "Director".

(3) The Employment Protection (Guernsey) Law, 1998 is amended as follows -

(a) in section 16(2)(a), for "Committee" substitute "Director",

(b) in section 19(3)(c), for "an officer of the Committee" substitute "the Director",

(c) in section 20 -

(i) in subsection (1) -

(A) for "Committee which" substitute "Director who",

(B) for paragraph (1)(a) substitute -

"(a) use best endeavours to settle the complaint by giving such advice and assistance as the

Director thinks necessary or expedient or by conciliation, and",

(C) in paragraph (b)(i), for "its opinion" substitute "the Director's opinion",

(D) in paragraph (b)(ii) for "transmitted to it" substitute "transmitted to the Director", and for "its opinion" substitute "the Director's opinion",

(ii) in subsections (2) and (3), in each place it occurs, for "Committee" substitute "Director", and

(iii) in subsection (4) for "Committee or any member or officer thereof" substitute "Director or any officer thereof",

(d) in section 30A(2)(c) for "Committee" substitute "Director",

(e) in section 33, after "of the Committee" insert "or the Director", and after "member or officer thereof" insert ", as the case may be",

(f) in section 34(1), in the appropriate place insert -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023,"

- (g) in section 37 -
  - (i) in subsection (1), after paragraph (e) insert the following paragraph -

"(f) on the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey,"
  - (ii) in subsection (2), after "the Tribunal" insert ", the Director",
  - (iii) in subsection (5), after "the Tribunal" insert ", the Director",
- (h) in section 38 for "Committee" substitute "Director", and
- (i) in section 39 -
  - (i) in the title, after "Committee" insert "and Director", and
  - (ii) for "The Committee and its members and officers shall, subject to the provisions of section 20(4)" substitute "The Committee and its members and officers and the Director and the Director's officers shall, subject in the case of the Director and the Director's officers to the provisions of section 20(4)".

(4) The Prevention of Discrimination (Guernsey) Ordinance, 2022 is amended as follows -

(a) after subsection 61(5) insert -

"(6) No financial penalty may be imposed on a person under this section in circumstances where a discretionary financial penalty has already been imposed on the person by the Director under any other enactment (including, but not limited to, section 25 of the Employment and Equal Opportunities Service (Guernsey) Law, 2023) in respect of the same facts or circumstances."