

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE TRANSFER OF STATES UNDERTAKINGS (PROTECTION OF EMPLOYMENT)  
(INFORMATION SYSTEMS AND SERVICES) ORDINANCE, 2019**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Ordinance is made under section 10 of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 ("the 2001 Law"). Its purpose is to provide a simple mechanism to give appropriate "TUPE" protections to States IT employees being transferred to a separate corporate entity, as part of the Future Digital Services ("FDS") project. The main effect of the Ordinance is to enable such employees to be transferred without their contracts of employment being terminated; to provide that the dismissal of such an employee for a reason associated with the transfer shall be regarded as unfair for the purposes of the Employment Protection (Guernsey) Law, 1998; and to provide that after the transfer, the employees should continue to enjoy pension arrangements broadly comparable to those provided to them under the public servants' pension scheme immediately before the transfer.

The 2001 Law provided for a TUPE transfer of the undertaking of the States Telecommunications Board. Section 10 of the 2001 Law provides that the States may by Ordinance provide that the Law's provisions shall apply to the transfer of the undertakings (or parts of undertakings) of other States Committees, "subject to such exceptions, adaptations and modifications as may be prescribed". Two Ordinances have previously been made under section 10, dealing with the former States Electricity Board (the Transfer of States Undertakings (Protection of Employment) (Electricity Board) Ordinance, 2001) and Post Office Board (the Transfer of States Undertakings (Protection of Employment) (Post Office Board) Ordinance, 2001). This Ordinance is in very largely the same terms as those two previous Ordinances, as they are tried and tested precedents, with one exception described below.

Section 1 applies the provisions of the 2001 Law (subject to the exceptions set out in the Ordinance) to the relevant undertaking, Information Systems and Services, that being the part of the Policy & Resources Committee that provides States IT services. Most, but not all, of the employees within Information Systems and Services will be transferred under the FDS project. As such, Information Systems and Services is defined (in section 4) as meaning the part of the undertaking of the Policy & Resources Committee of that name identified by that Committee for transfer. Section 1 is in effectively the same terms as the equivalent provision in the 2001 Ordinances.

Section 2 modifies the application of section 5 of the Law, and is the main difference from the two previous Ordinances made under the 2001 Law, in that there is no equivalent to this provision in those Ordinances. The purpose of section 2 is to make clear that the duty in section 5(1) of the 2001 Law on the transferee to make arrangements for the provision of benefits under an occupational pension scheme broadly comparable to those being provided to those employees immediately before the transfer is an ongoing duty that continues after the transfer for the duration of the transferred person's employment by the transferee.

Section 3 is a clarificatory provision in respect of section 7 of the 2001 Law (Effect of transfer on union recognition) and is a provision found in the two previous Ordinances. Section 4 is the interpretation section, and sections 5 and 6 deal with citation and commencement.

# **The Transfer of States Undertakings (Protection of Employment) (Information Systems and Services)**

## **Ordinance, 2019**

**THE STATES**, in pursuance of their Resolutions of the [12<sup>th</sup> June], 2019<sup>a</sup>, and in exercise of the powers conferred on them by sections 10 and 13 of the Transfer of States Undertakings (Protection of Employment) (Guernsey), Law, 2001<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Application of Law to Information Systems and Services.**

1. The Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 ("**the Law**") shall, subject to the provisions of sections 2 and 3 of this Ordinance, apply to the transfer of the undertaking or any part of the undertaking of Information Systems and Services in all respects as it applies to the transfer of the undertaking or any part of the undertaking of the States Telecommunications Board; and accordingly any reference in the Law as so applied, however expressed, to the States Telecommunications Board or to the undertaking or any part of the undertaking thereof shall, except in section 10 of the Law, be construed as a reference to Information Systems and Services or (as the case may be) to the undertaking or any part of the undertaking thereof.

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<sup>a</sup> Article \* of Billet d'État No. \* of 2019.

<sup>b</sup> Ordres en Conseil Vol. XLI, p. 605; as amended by Recueil d'Ordonnances Tome XXVIII, p. 478, Tome XXIX, p. 406 and Ordinance No. IX of 2016. There are other amendments not relevant to this Ordinance.

**Modification of section 5 of the Law.**

2. In section 5 of the Law as it applies to the transfer of the undertaking or any part of the undertaking of Information Systems and Services, insert the following subsection after subsection (1) -

"(1A) For the avoidance of doubt, the transferee shall, in respect of any person who falls within paragraphs (a) and (b) of subsection (1), ensure that the arrangements made for the provision of benefits under an occupational pension scheme continue, after the transfer of the undertaking or any part thereof and for the duration of that person's employment by the transferee, to be broadly comparable to those which would have been provided to or in respect of that person under the public servants' pension scheme had that person remained in that scheme."

**Modification of section 7 of the Law.**

3. For section 7(1) of the Law as it applies to the transfer of the undertaking or any part of the undertaking of Information Systems and Services, substitute the following subsection –

"(1) This section applies whether or not, after a transfer of the undertaking or any part thereof, the undertaking of the part transferred maintains an identity distinct from the remainder of the transferee's undertaking."

**Interpretation.**

4. In this Ordinance –

"**Information Systems and Services**" means the part of the undertaking of the States of Guernsey Policy & Resources Committee of that

name identified by that Committee for transfer, and

"**the Law**" has the meaning given in section 1.

**Citation.**

5. This Ordinance may be cited as the Transfer of States Undertakings (Protection of Employment) (Information Systems and Services) Ordinance, 2019.

**Commencement.**

6. This Ordinance shall come into force on 22<sup>nd</sup> July, 2019.