

# BILLET D'ÉTAT No. VIII, 2009

25<sup>th</sup> March 2009

	<i>Page</i>
Projet de Loi entitled “The Minimum Wage (Guernsey) Law, 2009	1
The Electricity (Guernsey) Law, 2001 (Amendment) Ordinance, 2009	45
The Dwelling Profits Tax (Suspension of Law) (Guernsey) Ordinance, 2009	70
The Income Tax (Guernsey) (Approval of Agreement with United Kingdom) Ordinance, 2009	72

# PROJET DE LOI

ENTITLED

## **The Minimum Wage (Guernsey) Law, 2009**

### ARRANGEMENT OF SECTIONS

#### PART I

##### ENTITLEMENT TO MINIMUM WAGE

1. Workers to be paid at least minimum wage.
2. Determination of hourly rate of remuneration.
3. Young Persons' Minimum Wage Rate.
4. Apprentices.

#### PART II

##### SETTING AND AMENDING THE MINIMUM WAGE AND THE YOUNG PERSONS' MINIMUM WAGE RATE

5. Duty to consult.
6. Factors to be taken into account.

#### PART III

##### ENFORCEMENT

7. Duty on employer to keep records.
8. Worker's right of access to records.
9. Failure of employer to allow access to records.
10. Non-compliance: worker entitled to additional remuneration.
11. Court may stay minimum wage proceedings for conciliation.
12. Sums awarded by Court in minimum wage proceedings to be recoverable as preferred debts.
13. Powers of officers.
14. Power of officer to issue enforcement notice.
15. Non-compliance: power of officer to make complaint to Tribunal on behalf of worker.

16. Power to make Ordinances providing for financial penalties for non-compliance.
17. Right not to suffer a detriment.
18. Enforcement of the right.
19. Restrictions on contracting out, and compromise agreements.
20. Evidential burden.
21. Offences.
22. Offences by bodies corporate etc.

PART IV  
EXCLUSIONS AND SPECIAL CLASSES OF PERSON

23. Share fishermen.
24. Voluntary workers.
25. Prisoners.
26. Agency workers who are not otherwise "workers".
27. Home workers who are not otherwise "workers".
28. Application of Law to superior employers.

PART V  
GENERAL PROVISIONS

29. Amendments to the 1993 Law.
30. Amendments to the 1998 Law.
31. Regulations.
32. Interpretation
33. Citation and commencement.

SCHEDULE: Amendments to the Employment Protection (Guernsey) Law, 1998

# PROJET DE LOI

ENTITLED

## **The Minimum Wage (Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolution of the 1<sup>st</sup> day of November 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART I

#### ENTITLEMENT TO MINIMUM WAGE

##### **Workers to be paid at least minimum wage.**

1. (1) A worker who qualifies for the minimum wage in any pay reference period shall be remunerated by his employer in respect of his work at a rate which is not less than the minimum wage.

(2) A person qualifies for the minimum wage if he –

(a) is a worker,

(b) is working, or ordinarily works, in Guernsey under his contract, and

(c) has ceased to be of compulsory school age.

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<sup>a</sup> Article IX of Billet d'État No. XXII of 2007.

(3) The minimum wage shall be such single hourly rate as the Department may from time to time prescribe by regulations.

(4) For the purposes of this Law a "**pay reference period**" is such period as the Department may prescribe by regulations for the purpose.

(5) In this Law, "**compulsory school age**" has the same meaning as in the Education (Guernsey) Law, 1970, as amended<sup>b</sup>.

(6) Subsections (1) to (3) are subject to the following provisions of this Law.

**Determination of hourly rate of remuneration.**

2. (1) The Department may by regulations make provision for determining what is the hourly rate at which a person is to be regarded for the purposes of this Law as remunerated by his employer in respect of his work in any pay reference period.

(2) The regulations may make provision for determining the hourly rate in cases where –

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<sup>b</sup> Ordres en Conseil Vol. XXII, p. 318; amended by the Supplementary Family Allowances (Guernsey) Law, 1976 (No. IV of 1976); the Education (Amendment) (Guernsey) Law, 1981 (No. X of 1981); the Education (Amendment) (Guernsey) Law, 1983 (No. VII of 1983); the Education (Amendment) (Guernsey) Law, 1987 (No. XIII of 1987); the Education (Amendment) (Guernsey) Law, 1988 (No. XV of 1988); the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (No. V of 1989); the Education (Amendment) (Guernsey) Law, 1990 (No. XV of 1990); and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (Ordinance No. XXXIII of 2003).

- (a) the remuneration, to the extent that it is at a periodic rate, is at a single rate,
  - (b) the remuneration is, in whole or in part, at different rates applicable at different times or in different circumstances,
  - (c) the remuneration is, in whole or in part, otherwise than at a periodic rate or rates, and
  - (d) the remuneration consists, in whole or in part, of benefits in kind.
- (3) The regulations may make provision with respect to –
- (a) circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated, and
  - (b) the treatment of periods of paid or unpaid absence from, or lack of, work and of remuneration in respect of such periods.
- (4) Any regulations made under subsection (3)(a) may include provision in connection with –
- (a) treating a person as, or as not, working for a maximum or minimum time, or for a proportion of the time, in

any period, and

- (b) determining any matter to which that paragraph relates by reference to the terms of an agreement.

(5) Subject to subsection (6), the regulations may make provision with respect to –

- (a) what is to be treated as, or as not, forming part of a person's remuneration, and the extent to which it is to be so treated,
- (b) the valuation of benefits in kind,
- (c) the treatment of deductions from earnings, and
- (d) the treatment of any charges or expenses which a person is required to bear.

(6) In regulations made under this section, no benefits in kind shall be treated as forming part of a person's remuneration apart from accommodation and food provided to the person by his employer as part of his employment contract; and such regulations shall further provide that if food is provided to a person by his employer as part of his employment contract and he chooses not to accept it, then the provision of that food shall not be treated as forming a part of his remuneration.

(7) The regulations may make provision with respect to –

- (a) the attribution to a period, or the apportionment

between two or more periods, of the whole or any part of any remuneration or work, whether or not the remuneration is received or the work is done within the period or periods in question,

- (b) the aggregation of the whole or any part of the remuneration for different periods, and
- (c) the time at which remuneration is to be treated as received or accruing.

(8) Subsections (2) to (7) are without prejudice to the generality of subsection (1).

(9) No provision shall be made under this section which treats the same circumstances differently in relation to –

- (a) different areas,
- (b) different sectors of employment,
- (c) undertakings of different sizes,
- (d) persons of different ages, or
- (e) persons of different occupations.

### **Young Persons' Minimum Wage Rate.**

3. (1) The Department may by regulations make provision in relation to persons of or below the age of 18, by prescribing an hourly rate for the



minimum wage other than the single hourly rate for the time being prescribed under section 1(3), which shall be referred to as the Young Persons' Minimum Wage Rate.

(2) The Department may by regulations change the age at which persons qualify for the minimum wage at the single hourly rate for the time being prescribed under section 1(3).

(3) References in this Law (however expressed) to the minimum wage, or to the rate of the minimum wage, include references, where appropriate, to the minimum wage at the Young Persons' Minimum Wage Rate.

#### **Apprentices.**

4. (1) Regulations under section 3(1) may prevent persons of or below the age of 18 who are apprentices from qualifying for the Young Persons' Minimum Wage Rate.

(2) The Department may by regulations prevent apprentices above the age of 18 from qualifying for the minimum wage for the first twelve months of their apprenticeships.

## PART II

### SETTING AND AMENDING THE MINIMUM WAGE AND THE YOUNG PERSONS' MINIMUM WAGE RATE

#### **Duty to consult.**

5. (1) Before making regulations under section 1(3), 2(1), 3(1) or 3(2), the Department shall consult such organizations, or associations of organizations, representative of employers and employees in Guernsey, and such other organizations and bodies, as appear to the Department to be appropriate.

(2) For the avoidance of doubt, the effectiveness for the purposes of subsection (1) of any consultation undertaken by the Department before this section comes into force shall not be affected by the fact that this section was not in force.

**Factors to be taken into account.**

6. Before making regulations under section 1(3), 2(1) or 3(1), the Department shall consider and take into account –

- (a) the current rate of the minimum wage in the United Kingdom, the Isle of Man and Jersey,
- (b) the current economic and trading conditions prevailing in Guernsey,
- (c) the rate of inflation in Guernsey,
- (d) the rate of unemployment in Guernsey,
- (e) current rates of pay in Guernsey,
- (f) the increase or decrease in rates of pay in Guernsey over the previous twelve months,

and such other factors as appear to it to be relevant.

PART III  
ENFORCEMENT

**Duty on employer to keep records.**

7. (1) The employer of a worker who qualifies for the minimum wage shall keep in respect of that worker records sufficient to establish that he is remunerating the worker at a rate at least equal to the minimum wage.

- (2) The records required to be kept under subsection (1) –
- (a) shall be in a form which enables the information kept about a worker in respect of a pay reference period to be produced in a single document,
  - (b) shall be kept by the employer for a period of three years beginning with the day upon which the pay reference period immediately following that to which they relate ends, and
  - (c) may be kept by means of a computer.

**Worker's right of access to records.**

8. (1) A worker may, in accordance with the following provisions of this section –

- (a) require his employer to produce any relevant records, and
- (b) inspect and examine those records and copy any part of them.

- (2) The rights conferred by subsection (1) are exercisable –
- (a) only if the worker believes on reasonable grounds that he is or may be being, or has or may have been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage,
  - (b) only for the purpose of establishing whether or not the worker is being, or has been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage, and
  - (c) only if the worker gives a written notice (a "**production notice**") to his employer requesting the production of any relevant records relating to such period as may be described in the notice.

(3) The rights conferred by subsection (1) are exercisable -

- (a) by the worker alone, or
- (b) by the worker accompanied by such other person as the worker may think fit.

(4) If the worker intends to exercise the right conferred by subsection (3)(b), the production notice must contain a statement of that intention.

(5) Where a production notice is given, the employer shall give the worker reasonable notice of the place and time at which the relevant records will be produced.

(6) The place at which the relevant records are produced must be

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(a) the worker's place of work, or

(b) any other place at which it is reasonable, in all the circumstances, for the worker to attend to inspect the relevant records, or

(c) such other place as may be agreed between the worker and the employer.

(7) The relevant records must be produced -

(a) before the end of the period of fourteen days following the date of receipt of the production notice, or

(b) at such later time as may be agreed during that period between the worker and the employer.

(8) In this section -

"**records**" means records which the worker's employer is required to keep and, at the time of receipt of the production notice, preserve in accordance with section 7, and

"**relevant records**" means such parts of, or such extracts from, any records as are relevant to establishing whether or not the worker has, for any pay reference period to which the records relate, been remunerated by the employer at a rate which is at least equal to the minimum wage.

**Failure of employer to allow access to records.**

9. (1) A complaint may be presented to the Employment and Discrimination Tribunal ("**the Tribunal**") by a worker on the ground that the employer -

- (a) failed to produce some or all of the relevant records in accordance with section 8(6) or (7), or
- (b) failed to allow the worker to exercise some or all of the rights conferred by section 8(1)(b) or (3)(b).

(2) Where the Tribunal finds a complaint under this section well-founded, it shall -

- (a) make a declaration to that effect, and
- (b) make an award that the employer pay to the worker a sum equal to 80 times the hourly amount of the minimum wage (as in force when the award is made).

(3) The Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal before the expiry of the period of three months following -

- (a) the end of the period of fourteen days mentioned in section 8(7)(a), or
- (b) in a case where a later day was agreed under paragraph section 8(7)(b), that later day.

(4) Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the expiry of the period of three months mentioned in subsection (3), the Tribunal may consider the complaint if it is presented within such further period as it considers reasonable.

**Non-compliance: worker entitled to additional remuneration.**

**10.** (1) If a worker who qualifies for the minimum wage is remunerated by his employer at a rate which is less than the minimum wage, the worker shall be taken to be entitled under his contract to be paid, as an additional remuneration in respect of that period, the amount described in subsection (2).

- (2) That amount is the difference between –
  - (a) the relevant remuneration received by the worker for the pay reference period, and
  - (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the rate of minimum wage which was payable in respect of the worker during that period.

(3) For the avoidance of doubt, and without prejudice to any other remedy which may be open to him, where a worker qualifies for the minimum

wage and is remunerated by his employer at a rate which is less than the minimum wage contrary to section 1(1) –

- (a) he (or in the circumstances described in section 15, an officer acting on his behalf) may present a complaint against his employer to the Tribunal under section 16(1)(d) of the Employment Protection (Guernsey) Law, 1998 as amended<sup>c</sup> ("**the 1998 Law**"); or
- (b) he may seek to enforce the entitlement under his contract conferred by subsection (1) to be paid the amount described in subsection (2) by commencing proceedings against his employer for the recovery of the debt in the Magistrate's Court or the Ordinary Court (as the case may be) ("**the appropriate court**").

Proceedings described in paragraphs (a) and (b) are subject to section 30C of the 1998 Law ("Minimum wage decisions to be binding").

(4) In subsection (2), "**relevant remuneration**" means remuneration which falls to be brought into account for the purposes of regulations under sections 2 and 3.

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<sup>c</sup> Order in Council No. IX of 1998; amended by No. XVIII of 2001; No. VIII of 2002; No. I of 2006; and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (Recueil d'Ordonnances Tome XXX, p. 627). Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).



**Court may stay minimum wage proceedings for conciliation.**

11. (1) The appropriate court may, at any time, stay proceedings described in section 10(3)(b) for a period of six weeks and refer the parties to the Department, which shall use its best endeavours to settle the action by giving such advice and assistance as it thinks necessary, or by conciliation.

(2) Either party may, by way of written representations endorsed by the Department, apply to the appropriate court for an extension of a stay of the action granted under subsection (1) if, in the opinion of that party and the Department, conciliation and negotiation are in progress with a view to settlement.

**Sums awarded by Court in minimum wage proceedings to be recoverable as preferred debts.**

12. For the purposes of section 1 of the Preferred Debts (Guernsey) Law, 1983 as amended<sup>d</sup> (the "**Preferred Debts Law**"), in the distribution of the property of a person whose affairs have been declared to be en désastre at a meeting of his arresting creditors held before a Commissioner of the Royal Court, and in the winding up of a company which is insolvent –

- (a) a sum awarded by the appropriate court in proceedings under section 10(3)(b) ranks equally with -
  - (i) the debts to which section 1(1)(b) of the Preferred Debts Law relates, and
  - (ii) any award of compensation under section 45

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<sup>d</sup> Ordres en Conseil Vol. XXVIII, p. 184; amended by No. VII of 1992; No. III of 1993; No. IX of 1998; No. XIV of 2008; and Ordinances XXXI of 2005 and XXIII of 2006.

of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 or under sections 15K, 21, 24 or 24A of the 1998 Law,

and shall be paid in full, unless the assets are insufficient, in which case the award made in proceedings under section 10(3)(b) and the debts and award described in subparagraphs (i) and (ii) shall abate in equal proportions,

- (b) subject to the provisions of paragraph (a), an award made in proceedings under section 10(3)(b) is payable in priority to all debts other than debts to which section 1(1)(a) of the Preferred Debts Law relates, and
- (c) notwithstanding the provisions of paragraphs (a) and (b), the amount of an award made in proceedings under section 10(3)(b) to which priority is to be given under those provisions shall not, in the case of any one claimant, exceed £3,000 or such greater sum as may for the time being be prescribed by Ordinance of the States for the purposes of section 1(2) of the Preferred Debts Law.

**Powers of officers.**

**13.** (1) The Department may appoint officers to act for the purposes of this Law.

(2) When acting for the purposes of this Law, an officer shall, if so required, produce some duly authenticated document showing his authority so to act.

(3) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of this Law does not know that he is an officer so acting, the officer shall identify himself as such to that person.

(4) Where an officer acting for the purposes of this Law -

- (a) is of the opinion described in section 14(1),
- (b) believes that an employer is in breach of section 7(1),  
or
- (c) believes that an employer has acted in a way described in section 9(1) in relation to a worker,

he shall have power for the performance of his duties -

- (i) to require the production by a relevant person of any records required to be kept and preserved in accordance with section 7,
- (ii) to inspect and examine those records and to copy any material part of them,
- (iii) to require a relevant person to furnish to him (either alone or in the presence of any other

person, as the officer thinks fit) an explanation of them, and

- (iv) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Law, or any enforcement notice under section 14, is being or has been complied with.

(5) An officer acting for the purposes of this Law shall have power for the performance of his duties at all reasonable times to enter any relevant premises in order to exercise any power conferred on the officer by subsection (4).

(6) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in criminal proceedings except –

- (a) in proceedings for an offence under section 21(5) or (6), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(7) A statement may not be used by virtue of subsection (6) against a person unless –

- (a) evidence relating to it is adduced, or

- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

(8) The powers conferred by subsections (4) and (5) include power, on reasonable written notice, to require a relevant person -

- (a) to produce any such records as are mentioned in subsection (4)(i) to an officer at such time and place as may be specified in the notice, or
- (b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in subsections (4)(iii) and (iv).

(9) In this section "**relevant person**" means any person whom an officer acting for the purposes of this Law has reasonable cause to believe to be -

- (a) the employer of a worker,
- (b) a person who for the purposes of section 26 is the agent or the principal,
- (c) a person who supplies work to an individual who qualifies for the minimum wage,
- (d) a worker, servant or agent of a person falling within paragraph (a), (b) or (c), or

(e) a person who qualifies for the minimum wage.

(10) In this section "**relevant premises**" means any premises which an officer acting for the purposes of this Law has reasonable cause to believe to be —

(a) premises at which an employer carries on business,

(b) premises which an employer uses in connection with his business (including any place used, in connection with that business, for giving out work to home workers, within the meaning of section 27), or

(c) premises of a person who for the purposes of section 26 is the agent or the principal.

**Power of officer to issue enforcement notice.**

**14.** (1) If an officer acting for the purposes of this Law is of the opinion that a worker who qualifies for the minimum wage has not been remunerated for any pay reference period by his employer at a rate at least equal to the minimum wage, the officer may serve a notice (an "**enforcement notice**") on the employer requiring the employer to remunerate the worker for pay reference periods ending on or after the date of the notice at a rate equal to the minimum wage.

(2) An enforcement notice may also require the employer to pay to the worker within such time as may be specified in the notice the sum due to the worker under section 10 in respect of the employer's previous failure to remunerate the worker at a rate at least equal to the minimum wage.

(3) The same enforcement notice may relate to more than one worker (and, where it does so, may be so framed as to relate to workers specified in the notice or to workers of a description so specified).

(4) A person on whom an enforcement notice is served may appeal against the notice before the end of the period of 4 weeks following the date of service of the notice.

(5) An appeal under subsection (4) shall lie to the Tribunal.

(6) On an appeal under subsection (4), the Tribunal shall dismiss the appeal unless it is established –

- (a) that, in the case of the worker or workers to whom the enforcement notice relates, the facts are such that an officer who was aware of them would have had no reason to serve any enforcement notice on the appellant,
- (b) where the enforcement notice relates to 2 or more workers, that the facts are such that an officer who was aware of them would have had no reason to include some of the workers in any enforcement notice served on the appellant, or
- (c) where the enforcement notice imposes a requirement under subsection (2) in relation to a worker –

- (i) that no sum was due to the worker under section 10, or
- (ii) that the amount specified in the notice as the sum due to the worker under that section is incorrect,

and in this paragraph any reference to a worker includes a reference to a person whom the enforcement notice purports to treat as a worker.

(7) Where an appeal is allowed by virtue of subsection (6)(a), the Tribunal shall rescind the enforcement notice.

(8) If, in a case where subsection (7) does not apply, an appeal is allowed by virtue of subsection (6)(b) or (c) –

- (a) the Tribunal shall rectify the enforcement notice, and
- (b) the enforcement notice shall have effect as if it had originally been served as so rectified.

(9) The powers of the Tribunal in allowing an appeal in a case where subsection (8) applies shall include power to rectify, as the Tribunal may consider appropriate in consequence of its decision on the appeal, any penalty notice which has been served under an Ordinance made under section 16 in respect of the enforcement notice.

(10) Where a penalty notice is rectified under subsection (9), it shall have effect as if it had originally been served as so rectified.



**Non-compliance: power of officer to make complaint to Tribunal on behalf of worker.**

15. (1) If an enforcement notice is not complied with in whole or in part, an officer acting for the purposes of this Law may, on behalf of any worker to whom the notice relates, and on receipt of a written request to do so, make a complaint under section 16(1)(d) of the 1998 Law to the Tribunal.

(2) The powers conferred by subsection (1) on an officer acting for the purposes of this Law shall not be in derogation of any right which the worker has to make a complaint himself under section 16(1)(d) of the 1998 Law, nor of any right that the worker has to commence other civil proceedings for the recovery, on a claim in contract, of any sums due to him by virtue of section 10 of this Law; but in the event of a worker making such a complaint or taking such proceedings, the officer shall immediately discontinue any complaint made to the Tribunal by the officer on behalf of the worker under subsection (1).

**Power to make Ordinances providing for financial penalties for non-compliance.**

16. (1) The States may by Ordinance make such provision as they think fit to provide for the service of a notice requiring the payment of a financial penalty (a "**penalty notice**") on a person on whom an enforcement notice has been served, where an officer acting for the purposes of this Law is satisfied that the person has failed in whole or in part to comply with that enforcement notice.

(2) An Ordinance under subsection (1) may, without limitation, make provision in relation to the following matters:

- (a) information that must be stated on penalty notices,
- (b) the method of calculation of financial penalties,

- (c) the recovery of financial penalties, and
- (d) appeals against penalty notices.

**Right not to suffer a detriment.**

17. (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that -

- (a) any action was taken, or was proposed to be taken, by or on behalf of the worker with a view to enforcing, or otherwise securing the benefit of, a right of that worker to which this section applies, or
  - (b) the employer was prosecuted for an offence under section 21, whether or not as a result of action taken by or on behalf of the worker for the purpose of enforcing, or otherwise securing the benefit of, a right of that worker to which this section applies, or
  - (c) the worker qualifies, or will or might qualify, for the minimum wage.
- (2) It is immaterial for the purposes of subsection (1)(a) or (b) -
- (a) whether or not the worker has the right, or
  - (b) whether or not the right has been infringed,

but, for either subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed, must be made in good faith.

- (3) The following are the rights to which this section applies -
  - (a) any right conferred by, or by virtue of, any provision of this Law for which the remedy for its infringement is by way of a complaint to the Tribunal, and
  - (b) any right conferred by section 10.

**Enforcement of the right.**

**18.** A worker may present a complaint to the Tribunal that he has been subjected to a detriment in contravention of section 17 under section 16(1)(c) of the 1998 Law.

**Restrictions on contracting out, and compromise agreements.**

**19.** The provisions of section 30A of the 1998 Law shall apply in relation to the provisions of this Law, and to proceedings under this Law before the Tribunal, as they apply in relation to the provisions of the 1998 Law, and to proceedings under that Law before the Tribunal.

**Evidential burden.**

**20.** (1) Where in any civil proceedings any question arises as to whether an individual qualifies or qualified at any time for the minimum wage, it shall be presumed that the individual qualifies, or, as the case may be, qualified at that time for the minimum wage unless the contrary is established.

(2) Where in any civil proceedings a person seeks to recover the amount described in section 10(2), it shall be presumed for the purposes of the

proceedings, so far as relating to that amount, that the individual in question was remunerated at a rate less than the minimum wage unless the contrary is established.

**Offences.**

21. (1) If the employer of a worker who qualifies for the minimum wage refuses or wilfully neglects to remunerate the worker for any pay reference period at a rate which is at least equal to the minimum wage, that employer is guilty of an offence.

(2) If a person who is required to keep or preserve any record in accordance with section 7 fails to do so, that person is guilty of an offence.

(3) If a person makes, or knowingly causes or allows to be made, in a record required to be kept in accordance with section 7 any entry which he knows, or has reasonable cause to believe, to be false, deceptive or misleading in a material particular, that person is guilty of an offence.

(4) If a person recklessly makes an entry, dishonestly or otherwise, which is false, deceptive or misleading in a material particular, in a record required to be kept in accordance with section 7, that person is guilty of an offence.

(5) If a person, for purposes connected with the provisions of this Law, produces or furnishes, or knowingly causes or allows to be produced or furnished, any record or information which he knows, or has reasonable cause to believe, to be false, deceptive or misleading in a material particular, that person is guilty of an offence.

(6) If a person -

- (a) intentionally delays or obstructs an officer acting for the purposes of this Law in the exercise of any power conferred by this Law, or
- (b) refuses or neglects to answer any question, furnish any information or produce any document when required to do so under section 13(4),

that person is guilty of an offence.

(7) Where the commission by any person of an offence under subsection (1) or (2) is due to the act or default of some other person, that other person is also guilty of the offence.

(8) A person may be charged with and convicted of an offence by virtue of subsection (7) whether or not proceedings are taken against any other person.

(9) In any proceedings for an offence under subsection (1) or (2) it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this Law, and of any relevant regulations made under it, were complied with by himself and by any person under his control.

(10) Subject to subsection (11), a person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(11) A person guilty of an offence under subsection (3) or (4) shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale, or to a term of imprisonment not exceeding three months, or to both.

**Offences by bodies corporate etc.**

22. (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 liable to be proceeded against and punished accordingly.

(3) In subsection (2) "**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) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(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 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 such a capacity,

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

(6) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

#### PART IV

#### EXCLUSIONS AND SPECIAL CLASSES OF PERSON

##### Share fishermen.

**23.** A person -

- (a) employed as master, or as a member of the crew, of a fishing vessel, and
- (b) remunerated, in respect of that employment, only by a share in the profits or gross earnings of the vessel,

does not qualify for the minimum wage in respect of that employment.

**Voluntary workers.**

**24.** (1) A worker employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body does not qualify for the minimum wage in respect of that employment if he receives, and under the terms of his employment (apart from this Law) is entitled to -

(a) no monetary payments of any description, or no monetary payments except in respect of expenses -

(i) actually incurred in the performance of his duties, or

(ii) reasonably estimated as likely to be or to have been so incurred, and

(b) no benefits in kind of any description, or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment.

(2) A person who would satisfy the conditions in subsection (1) but for receiving monetary payments made solely for the purpose of providing him with means of subsistence shall be taken to satisfy those conditions if -

(a) he is employed to do the work in question as a result of arrangements made between a charity acting in pursuance of its charitable purposes and the body for which the work is done, and



(b) the work is done for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.

(3) For the purposes of subsection (1)(b) -

(a) any training (other than that which a person necessarily acquires in the course of doing his work) shall be taken to be a benefit in kind; but

(b) there shall be left out of account any training provided for the sole or main purpose of improving the worker's ability to perform the work which he has agreed to do.

(4) In this section -

"**associated fund-raising body**" means a body of persons the profits of which are applied wholly for the purposes of a charity or voluntary organisation;

"**charity**" means any organisation established for charitable purposes only;

"**receive**", in relation to a monetary payment or a benefit in kind, means receive in respect of, or otherwise in connection with, the employment in question (whether or not under the terms of the employment);

"**statutory body**" means a body established by or under an enactment;

"**subsistence**" means such subsistence as is reasonable in the circumstances of the employment in question, and does not include accommodation; and

"**voluntary organisation**" means a body of persons, or the trustees of a trust, which is established only for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, but which is not a charity.

**Prisoners.**

25. (1) A prisoner does not qualify for the minimum wage in respect of any work that he undertakes.

(2) In this section, "**prisoner**" means a person detained in, or on temporary release from, a prison.

**Agency workers who are not otherwise "workers".**

26. (1) This section applies in any case where an individual ("**the agency worker**") -

- (a) is supplied by a person ("**the agent**") to do work for another ("**the principal**") under a contract or other arrangements made between the agent and the principal; but

- (b) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(2) In a case where this section applies, the other provisions of this Law shall have effect as if there were a worker's contract for the doing of the work by the agency worker made between the agency worker and -

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

**Home workers who are not otherwise "workers".**

27. (1) In determining for the purposes of this Law whether a home worker is or is not a worker, the definition of "worker" in section 32 shall have effect as if for the word "personally" there were substituted "(whether personally or otherwise)".

(2) In this section, "**home worker**" means an individual who contracts with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person.

**Application of Law to superior employers.**

**28.** Where -

- (a) the immediate employer of a worker is himself in the employment of some other person, and
- (b) the worker is employed on the premises of that other person,

that other person shall be deemed for the purposes of this Law to be the employer of the worker jointly with the immediate employer.

**PART V**

**GENERAL PROVISIONS**

**Amendments to the 1993 Law.**

**29.** In the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993 as amended<sup>e</sup>, in the definition of "industrial dispute" -

- (a) in paragraph (a), delete "(a), (b) or (c)", after "for dismissal" delete "or" and insert ",", and after "section 15J of that Law" insert ", subjecting a worker

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<sup>e</sup> Order in Council No. I of 1993, as amended by No. IX of 1998; No. VIII of 2002; Ordinance No. XXXIII of 2003; and Ordinance No. XXXI of 2005.

to a detriment in contravention of section 17 of the Minimum Wage (Guernsey) Law, 2009, or a contravention of section 1(1) of that Law", and

- (b) immediately after paragraph (b) insert a new paragraph
- (c) –

"(c) a dispute under the Minimum Wage (Guernsey) Law, 2009."

**Amendments to the 1998 Law.**

30. The amendments to the 1998 Law set out in the Schedule shall have effect.

**Regulations.**

31. (1) Except to the extent that this Law makes provision to the contrary, any power conferred by this Law to make regulations includes the power -

- (a) to make different provision for different cases or for different descriptions of person, and
- (b) to make incidental, consequential, supplemental or transitional provision and savings.

(2) Subsection (1)(a) does not have effect in relation to regulations under section 1(3).

(3) Any regulations made under section 1(3), 3(1) or 3(2) shall not have effect unless and until approved by a resolution of the States.

**Interpretation.**

32. (1) In this Law, unless the context otherwise requires –

"**agent**" has the meaning given in section 26(1)(a);

"**agency worker**" has the meaning given in section 26(1);

"**apprentice**" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of apprenticeship;

"**appropriate court**" has the meaning given in section 10(3)(b);

"**civil proceedings**" means proceedings before the Tribunal or civil proceedings before any other court;

"**contract of employment**" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"**Department**" means the States Commerce and Employment Department;

"**employer**", in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed (and see section 28);

"**employment**", in relation to a worker, means employment under his contract, and "**employed**" shall be construed accordingly;

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

"**enforcement notice**" has the meaning given in section 14;

"**Guernsey**" includes the islands of Herm and Jethou;

"**the 1998 Law**" has the meaning given in section 10;

"**officer**" means an officer appointed by the Department under section 13;

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

"**pay reference period**" has the meaning given in section 1(4);

"**principal**" has the meaning given in section 26(1)(a);

"**production notice**" has the meaning given in section 8(2)(c);

"**Tribunal**" means the Employment and Discrimination Tribunal;

"**uniform scale**" means the scale of fines for offences set out in the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>f</sup>; and

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<sup>f</sup> Ordres en Conseil Vol. XXXI, p. 278; amended by Recueil d'Ordonnances Tome XXV, p. 344 and Ordinance No. XXII of 1998.

"**worker**" (except in the phrases "agency worker" and "home worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under) -

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual,

and any reference to a worker's contract shall be construed accordingly.

(2) Any reference in this Law to doing work includes a reference to performing services; and "**work**" and other related expressions shall be construed accordingly.

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

(4) The Interpretation (Guernsey) Law, 1948<sup>g</sup> applies to the interpretation of this Law.

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<sup>g</sup> Ordres en Conseil Vol. XIII, p. 355.



**Citation and commencement.**

33. (1) This Law may be cited as the Minimum Wage (Guernsey) Law, 2009.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

**SCHEDULE****AMENDMENTS TO THE EMPLOYMENT PROTECTION (GUERNSEY) LAW,  
1998**

1. In section 12(4) of the 1998 Law, delete "." and insert "; or" at the end of paragraph (d), and immediately after paragraph (d) insert a new paragraph -

"(e) the Minimum Wage (Guernsey) Law, 2009 (**"the 2009 Law"**)."

2. In section 16(1) of the 1998 Law -

(a) insert "or section 17 of the 2009 Law, or" at the end of section 16(1)(c), and

(b) immediately after section 16(1)(c), insert a new subparagraph -

"(d) that he (or, if the complaint is being made by an officer acting for the purposes of the 2009 Law, the worker on whose behalf he is making the complaint) qualifies for the minimum wage and is being or has been remunerated by his employer at a rate which is less than the minimum wage, in contravention of section 1(1) of the 2009 Law,".

3. In section 16(2) of the 1998 Law,

- (a) in subparagraph (a), delete "in the case of a complaint under section (1)(a) or (c)", and
- (b) in subparagraph (b), delete "in any case,", delete ", in the case of a complaint under subsection (1)(a) or (c)", and immediately after "members" insert ", and in the case of a complaint under subsection (1)(d), a Tribunal constituted by a single member,".

4. In section 17(1) of the 1998 Law, in subparagraph (a)(ii), immediately after "section 16(1)(c)" insert "or (d)", and in section 17(6) immediately after "section 16(1)" insert "(a) or (b)".

5. In section 19(1) of the 1998 Law, delete "(a) or (c)", in section 20(1) delete "paragraph (a) or (c) of", and in section 20(2) immediately after "three members" insert "or, subject to section 20A, in the case of a complaint under section 16(1)(d), one member".

6. Immediately after section 20 of the 1998 Law, insert a new section –

**"Tribunal may remit minimum wage complaints for hearing by a three member Tribunal.**

**20A.** Where a complaint is made under section 16(1)(d), the Tribunal may direct, of its motion or on an application from either party, that the complaint be remitted for hearing by a Tribunal constituted by three members."

7. Immediately after section 24 of the 1998 Law, insert a new section –

**"Determination of minimum wage complaints."**

**24A.** (1) Where the Tribunal finds a complaint under section 16(1)(d) well-founded, it shall make a declaration to that effect and make an award of compensation in the sum of the amount described in section 10(2) of the 2009 Law.

(2) An award under this section –

(a) shall be recoverable as a judgment debt by the complainant from the employer, and

(b) shall carry interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 from the date of the order until the amount is paid; and the interest may be recovered by the complainant as part of the order."

**8.** In sections 29 and 30 of the 1998 Law, wherever "award under section 15K, 21 or 24" appear substitute "award under section 15K, 21, 24 or 24A".

**9.** In section 30B of the 1998 Law, for the marginal note substitute "Tribunal may join unfair dismissal, sex discrimination and minimum wage complaints", and in section 30B(a) for "or (c)" substitute ", (c) or (d)".

**10.** Immediately after section 30B of the 1998 Law, insert a new section

–

**"Minimum wage decisions to be binding.**

**30C.** For the avoidance of doubt –

- (a) any order, decision or finding of law or fact made by the Tribunal in proceedings in respect of a complaint under section 16(1)(d) shall (subject to section 25) be final and conclusive for the purposes of any civil proceedings to recover the amount described in section 10(2) of the 2009 Law arising out of the same or substantially the same facts, issues or circumstances, and
- (b) any order, decision or finding of law or fact made by a court in civil proceedings to recover the amount described in section 10(2) of the 2009 Law shall be final and conclusive for the purposes of any proceedings before the Tribunal in respect of a complaint under section 16(1)(d) arising out of the same or substantially the same facts, issues or circumstances."

## **The Electricity (Guernsey) Law, 2001 (Amendment) Ordinance, 2009**

**THE STATES**, in pursuance of their Resolution of the 29<sup>th</sup> day of January, 2003<sup>a</sup>, and in exercise of the powers conferred on them by section 36(1) of the Electricity (Guernsey) Law, 2001<sup>b</sup>, hereby order: -

### **Amendment of Law of 2001.**

1. The Electricity (Guernsey) Law, 2001 is amended in accordance with the provisions of this Ordinance.

2. In the Arrangement of Sections -

(a) for the references to sections 10, 11 and 12, substitute -

- "10. Duty to connect on request
- 11. Procedure for requiring a connection
- 12. Exceptions from duty to connect", and

(b) for the reference to sections 15 and 16, substitute -

- "15. Additional terms of connection
- 16. Special agreements with respect to connection"

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<sup>a</sup> Resolution 8 on Article XI of Billet d'État No. I of 2003.

<sup>b</sup> Order in Council No. XIII of 2001; as amended by the Electricity (Guernsey) (Commencement and Amendment) Ordinance, 2001 (No. L of 2001), and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

3. In section 2 –

(a) in subsection (1)(a)(ii), for "(a "conveyance licence")", substitute "(a "network licence")",

(b) for subsection (1)(a)(iii), substitute the following –

"(iii) to supply electricity in that person's Authorised Area (a "public electricity retail licence", the holder of a public electricity retail licence being referred to as a "public electricity retail licensee");", and

(c) in subsection (1)(a)(iv), for "a "special supply licensee"", substitute "a "special retail licensee"".

4. (1) In section 5(2), for "conveyance licence" substitute "network licence".

(2) In section 5(3), for "public electricity supply licence" substitute "public electricity retail licence".

5. In Part II (Generation, Conveyance and Supply of Electricity), for sections 10 to 17 substitute the following –

**"Duty to connect on request."**

10. (1) A network licensee is under a duty to make a connection between an electricity network and any premises, when required to do so by –

- (a) the owner or occupier of the premises; or
- (b) a public electricity retail licensee or a special retail licensee acting with the consent of the owner or the occupier of the premises,

for the purpose of enabling electricity to be conveyed to or from the premises.

(2) Any duty under subsection (1) includes a duty to provide such electrical lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

(3) The duties under this section shall be performed subject to such terms as may be agreed under section 11 for so long as the connection is required.

(4) In this section and sections 11 to 17 –

- (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);



- (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and
- (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by modification of an existing one.

(5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.

**Procedure for requiring a connection.**

**11.** (1) Where a person requires a connection to be made by a network licensee in pursuance of section 10(1), he shall give the network licensee a notice requiring him to offer terms for making the connection.

- (2) A notice under subsection (1) must specify –
  - (a) the premises to which a connection is required;
  - (b) the date on or by which the connection is to be made; and

- (c) the maximum power at which electricity may be required to be conveyed through the connection.

(3) The person requiring the connection shall also give the network licensee such other information in relation to the required connection as the network licensee may reasonably request.

(4) A request under subsection (3) shall be made as soon as practicable after the notice under subsection (1) is given (if not made before that time).

(5) As soon as practicable after receiving the notice under subsection (1) and any information requested under subsection (3), the network licensee shall give to the person requiring the connection a notice –

- (a) stating the extent (if any) to which his proposals are acceptable to the network licensee and specifying any counter proposals made by him;
- (b) specifying any payment which that person will be required to make under section 13(1);
- (c) specifying any security which that person will be required to give under section 14(1); and
- (d) stating any other terms which the person will be required to accept under section 15.

(6) A notice under subsection (5) shall also contain a statement of the effect of section 17.

**Exceptions from duty to connect.**

**12.** (1) Nothing in section 10(1) requires a network licensee to make a connection if –

- (a) he is prevented from doing so by circumstances not within his control;
- (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 19, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) it is not reasonable in all the circumstances for him to be required to do so.

(2) Subsection 1(c) does not permit a network licensee to disconnect any premises to which a connection is being maintained by him unless he gives not less than seven working days' notice of his intention to disconnect the premises to the occupier, or to the owner if the premises are not occupied.

**Power to recover expenditure.**

**13.** (1) Where any electric line or electrical plant is provided by a network licensee in pursuance of section 10(1) above, the network

licensee may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances.

(2) The reference in subsection (1) to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.

**Power to require security.**

14. (1) Subject to the following provisions of this section, a network licensee may require any person who requires a connection in pursuance of section 10(1) to give him reasonable security for the payment to him under section 13 in respect of the provision of any electric line or electrical plant.

(2) If a person fails to give any security required under subsection (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the network licensee may –

- (a) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
- (b) if the connection is being maintained, disconnect the premises in question.

(3) Where any money is deposited with a network licensee by way of security in pursuance of this section, the network licensee shall

pay interest, at such rate as may from time to time be fixed by the network licensee with the approval of the Director-General, on every sum so deposited for every three months during which it remains in the hands of the network licensee.

**Additional terms of connection.**

**15.** A network licensee may require any person who requires a connection in pursuance of section 10(1) to accept in respect of the making of the connection –

- (a) any restrictions which must be imposed for the purpose of enabling the network licensee to comply with regulations under section 19;
- (b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- (c) without prejudice to the generality of paragraph (a), any terms restricting any liability of the network licensee for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.

**Special agreements with respect to connection.**

**16.** (1) Notwithstanding anything in sections 10 to 15, a person who requires a connection in pursuance of section 10(1) may enter into an agreement with a network licensee (a "**special connection agreement**") for the making of the connection on such terms as may be agreed by the parties.

(2) So long as a special connection agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided by sections 10 to 15.

(3) Nothing in subsection (2) prevents the giving of a notice under section 11(1) requiring a connection to be made as from time to time when a special connection agreement ceases to be effective.

**Determination of disputes.**

17. (1) This section applies to any dispute arising under sections 10 to 15 between a network licensee and a person requiring a connection.

(2) A dispute to which this section applies –

(a) may be referred to the Director-General by either party; and

(b) on such a reference, shall be determined by order made either by the Director-General or, if the Director-General thinks fit, by an arbitrator appointed by the Director-General.

(3) The practice and procedure to be followed in connection with any such determination shall be such as the Director-General may consider appropriate.

(4) No dispute arising under sections 10 to 15 relating to the making of a connection may be referred to the Director-General after the

end of the period of 12 months beginning with the time when the connection was made.

(5) Where a dispute arising under sections 10 to 15 between a network licensee and a person requiring a connection falls to be determined under this section, the Director-General may give directions as to the circumstances in which, and the terms on which, the network licensee is to make or (as the case may be) to maintain a connection pending the determination of the dispute.

(6) Where any dispute arising under section 14(1) falls to be determined under this section, the Director-General may give directions as to the security (if any) to be given pending the determination of the dispute.

(7) Directions under subsections (5) or (6) may apply either in cases of particular descriptions or in particular cases.

(8) A person making an order under this section shall include in the order his reasons for reaching his decision with respect to the dispute.

(9) An order under this section –

(a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and

- (b) shall be final and shall be enforceable, in so far as it includes provision as to costs or expenses, as if it were a judgment of the Royal Court.

(10) Where an order under this section includes any provision as to costs or expenses as is mentioned in subsection (9)(a), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(11) Section 10(4)(a) does not apply to the references in this section to making a connection."

6. In section 33 (Interpretation) –

- (a) delete the definitions of "conveyance licence", "electricity conveyance licensee", "public electricity supply licence", "public electricity supply licensee" and "special supply licensee";
- (b) for the definition of "electricity network", substitute –

"**electricity network**" means a system which consists of high and low voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another, and from one substation to another, and for conveying electricity to any premises;"



- (c) immediately after the definition of "generation licence", insert–

"**high voltage line**" means an electrical line of a nominal voltage exceeding 11 kilovolts, and "**low voltage line**" shall be construed accordingly;"

- (d) immediately after the definition of "line", insert –

"**network licence**" means a licence granted pursuant to section 2(1)(a)(ii), and "**network licensee**" shall be construed accordingly;"

- (e) immediately after the definition of "prescribed", insert –

"**proceedings in bankruptcy**" includes –

- (a) proceedings where the affairs of a person are declared *en désastre* at a meeting of his arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the court of the Sénéchal, and
- (b) proceedings where an interim vesting order is made in respect of any real property in the Bailiwick;

"**public electricity retail licence**" means a licence granted pursuant to section 2(1)(a)(iii), and "**public electricity retail licensee**" shall be construed accordingly;"

- (f) immediately after the definition of "Royal Court", insert –

"**special retail licensee**" means a person granted a licence under section 2(1)(a)(iv);"; and

- (g) immediately after the definition of "turnover", insert –

"**uniform scale**" means the uniform scale of fines from time to time specified under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>c</sup>".

7. In section 18, for "public electricity supply licensee" substitute "public electricity retail licensee".

8. For Schedule 2, substitute the Schedule 2 set out in the Schedule to this Ordinance.

9. In Schedule 3 (Use Etc. of Electricity Meters), wherever "public electricity supply licensee" appears substitute "public electricity retail licensee", and wherever "special supply licensee" appears substitute "special retail licensee".

**Citation and commencement.**

10. This Ordinance may be cited as the Electricity (Guernsey) Law, 2001 (Amendment) Ordinance, 2009, and shall come into force on the 1<sup>st</sup> day of September, 2009.

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<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 278 (amended by Recueil d'Ordonnances Tome XXV, p. 344 and Recueil d'Ordonnances Tome XXVIII, p. 89).

**SCHEDULE****SCHEDULE 2****THE ELECTRICITY SUPPLY CODE***Recovery of electricity charges etc.*

1. (1) Subject to subparagraph (2), a public electricity retail licensee may recover from a tariff customer any charges due to it in respect of the supply of electricity, or in respect of the provision of any electricity meter.
- (2) A public electricity retail licensee who, for the purpose of meeting the needs of a disabled person replaces any electricity meter which has been provided by it with one which has been specially adapted shall not make any charge for the replacement; and Schedule 1 to this Law shall apply in relation to any dispute arising under this subparagraph as if it were a dispute arising under Part II of this Law.
- (3) If a tariff customer quits any premises at which electricity has been supplied to him by a public electricity retail licensee without giving notice thereof to the public electricity retail licensee so that it is received by the public electricity retail licensee at least two working days before he quits the premises, he shall be liable to pay the public electricity retail licensee all charges in respect of the supply of electricity to the premises accruing due up to whichever of the following first occurs, namely -

- (a) the second working day after he gives such notice to the licensee provided that reasonable access to the premises has been granted;
  - (b) the next day on which the register of any meter is ascertained; and
  - (c) the day from which any subsequent occupier of the premises requires the public electricity retail licensee to supply electricity to the premises.
- (4) Subparagraph (3), or a statement of the effect thereof, shall be endorsed upon every demand note for electricity charges payable to a public electricity retail licensee by a tariff customer.
- (5) If a tariff customer quits any premises at which electricity has been supplied to him by a public electricity retail licensee without paying all charges due from him in respect of the supply, or the provision of any electricity meter for the purposes of the supply, the public electricity retail licensee -
- (a) may refuse to furnish him with a supply of electricity at any other premises until he pays the amount due; but
  - (b) shall not be entitled to require payment of that amount from the next occupier of the premises.
- (6) If a tariff customer has not, within the requisite period, paid all charges due from him to a public electricity retail licensee in respect of the supply of electricity to any premises, or the provision of any

electricity meter for the purposes of that supply, the network licensee on behalf of the public electricity retail licensee, after the expiration of not less than two working days notice of its intention, may -

- (a) disconnect the supply to the premises, or to any other premises occupied by the customer, by such means as it thinks fit; and
  - (b) recover any expenses incurred in so doing from the customer.
- (7) In subparagraph (6), "**the requisite period**" means -
- (a) in the case of premises which are used wholly or mainly for domestic purposes, the period of not less than 10 days after the making by the public electricity retail licensee of a demand in writing for the payment of the charges due; and
  - (b) in the case of any other premises, the period of 10 days after the making of such a demand.
- (8) The powers conferred by subparagraph (6) shall not be exercisable as respects any amount which is genuinely in dispute.

*Restoration of supply by Public Electricity Retail Licensee*

2. (1) Where a network licensee on behalf of a public electricity retail licensee has disconnected the supply of electricity to any premises in consequence of any default on the part of a tariff customer, the public electricity retail licensee shall be under an obligation to resume the supply of electricity before the end of the period of two working days

beginning with the time when the requirements of subparagraph (2) are satisfied.

(2) The requirements of this subparagraph are that the customer in default -

(a) has made good the default;

(b) has paid the reasonable expenses of disconnecting and re-connecting the supply; and

(c) has given such security as is mentioned in section 14(1) of this Law.

(3) The obligation imposed by subparagraph (1) shall be a duty owed to any person who may be affected by a failure to comply with the obligation.

(4) Where a duty is owed by virtue of subparagraph (3) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(5) In any proceedings brought against a licensee in pursuance of subparagraph (4), it shall be a defence for the licensee to prove that it took all reasonable steps and exercised all due diligence to avoid failing to comply with the obligation imposed by subparagraph (1).

*Restoration of connection without consent*

3. (1) Where a supply of electricity to any premises has been disconnected by a network licensee, no person shall, without that licensee's consent, restore the connection.
- (2) If any person acts in contravention of subparagraph (1), he shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale and the network licensee may again disconnect the supply.

*Damage to electrical plants etc.*

4. (1) If any person intentionally or negligently damages, otherwise interferes with or allows to be damaged -
  - (a) any electrical plant or electric line belonging to or operated by a network licensee; or
  - (b) any electrical meter belonging to a network licensee, or operated by a public electricity retail licensee, and situated upon that person's property;

he shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

- (2) Where an offence has been committed under subparagraph (1)(a), the network licensee may disconnect the premises of the person so offending until the matter has been remedied.
- (3) Where an offence has been committed under subparagraph (1)(b) -

- (a) the public electricity retail licensee may discontinue the supply of electricity to the person so offending until the matter has been remedied; and
  - (b) the network licensee may remove any meter in respect of which any offence is committed.
- (4) Where a network licensee removes a meter under subparagraph (3)(b), he shall keep it safely until the Director General authorises him to destroy it or otherwise dispose of it.
- (5) Where electrical line or electrical plant on the consumer's property, or an electricity meter, is damaged through no fault of a public electricity retail licensee or a network licensee, or of their employees, servants or agents -
- (a) the costs of repairing that damage may be charged to the consumer by the public electricity retail licensee or the network licensee (as appropriate); and
  - (b) a licensee that has charged repair costs to the consumer under item (a) may, at its discretion, refuse to arrange for repairs to be carried out, until such time as adequate security for the costs of repair is provided by or on behalf of the consumer.

*Entry during continuance of supply*

5. (1) Any officer authorised by a network licensee may at all reasonable times, on the production of some duly authenticated document showing his authority, enter any premises to which the licensee is



maintaining a connection, for the purpose of inspecting any electric line or electrical plant provided by that licensee or removing or re-installing any electricity meter or installing any substitute meter or associated equipment.

(2) Any officer authorised by a public electricity retail licensee may at all reasonable times, on the production of some duly authenticated document showing his authority, enter any premises to which electricity is being supplied by him for the purpose of –

(a) ascertaining the register of any electricity meter; or

(b) taking a meter reading; or

(c) inspecting any electricity meter.

(3) The network licensee shall supply a substitute meter when a meter is removed under subparagraph (1).

(4) A power of entry for the purpose of removing or installing an electricity meter may not be exercised unless at least two working days' notice has been given to the occupier (or the owner of the premises if they are unoccupied).

*Entry on discontinuance of supply or connection*

6. (1) Where, by paragraph 4(3), or paragraph 8(3) of Schedule 3 to this Law -

- (a) a public electricity retail licensee is authorised to discontinue the supply of electricity to any premises; or
- (b) a network licensee is authorised to remove an electricity meter;

an officer authorised by either licensee may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of discontinuing the supply or removing the meter.

(2) Where -

- (a) a public electricity retail licensee, or network licensee, is authorised by any other provision of this Law or of regulations made under it (including any such provision as applied by a special connection agreement under section 16(1) of this Law) to discontinue, or disconnect, the supply of electricity to any premises;
- (b) a person occupying premises connected to an electricity network ceases to require a connection;
- (c) a person entering into occupation of any premises connected to an electricity network does not require such a connection; or
- (d) a person entering into occupation of any premises previously supplied with electricity through a meter belonging to or

operated by a public electricity retail licensee does not hire or borrow that meter;

any officer authorised by the network licensee concerned, after one working day's notice to the occupier, or to the owner of the premises if they are unoccupied, may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of disconnecting the premises or removing any electricity meter provided by that licensee.

*Entry for replacing, repairing or altering lines or plant*

7. (1) Any officer authorised by a network licensee, after one working day's notice to the occupier of any premises, or to the owner of any premises which are unoccupied, may at all reasonable times, on production of a duly authenticated document showing his authority, enter the premises of a tariff customer for the purpose of -
  - (a) placing a new electric line or new electrical plant in place of or in addition to any existing line or plant which has already been lawfully placed; or
  - (b) repairing or altering any such existing line or plant.
- (2) In the case of emergency arising from faults in any electric line or electrical plant entry may be made under subparagraph (1) without the notice required to be given by that subparagraph, but the notice shall then be given as soon as possible.

*Provisions as to power of entry*

8. (1) If, in attempt to exercise any of the powers of entry conferred by this Schedule, a public electricity retail licensee or network licensee has -

(a) made all reasonable efforts, otherwise than by the use of force, to obtain entry to the premises; and

(b) those efforts have been unsuccessful;

the Magistrate's Court may grant an order to the licensee authorising an officer authorised by the public electricity retail licensee to enter the premises by force.

(2) An order granted under subparagraph (1) shall specify the action which may be taken by the licensee to effect the entry by force and may stipulate conditions to be observed by the licensee.

(3) A public electricity retail licensee or network licensee shall incur no liability to any person in respect of the entry by force to the premises provided that it -

(a) takes no action to effect entry other than is specified by the order;

(b) observes any condition stipulated by the order; and

(c) does as little damage as is reasonably practicable in taking the specified action and in observing any stipulated condition.

- (4) An application by a public electricity retail licensee or network licensee for an order under sub-paragraph (1) may be made ex parte.
  - (5) Any costs incurred by a public electricity retail licensee or network licensee in obtaining and executing an order under subparagraph (1) shall be recoverable as a civil debt from the owner or the occupier (as appropriate) of the premises to which the order relates.
9. (1) Where in pursuance of any powers of entry conferred by this Schedule, entry is made on any premises by an officer authorised by a public electricity retail licensee or network licensee -
- (a) the officer shall ensure that the premises are left no less secure by reason of the entry; and
  - (b) the licensee shall make good, or pay compensation for, any damage caused by the officer, or by any person accompanying him in entering the premises, in taking any action therein authorised by this Schedule, or in making the premises secure.
- (2) Any officer exercising powers of entry conferred by this Schedule may be accompanied by such persons as may be necessary or expedient for the purpose for which the entry is made or for the purposes of subparagraph (1).
- (3) If any person intentionally obstructs any officer exercising powers of entry conferred by this Schedule, he shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

*Electrical plant etc. not to be subject to distress*

10. Any electrical plant, electric line or electricity meter owned by a network licensee -

(a) shall be deemed not to be landlord's fixtures, notwithstanding that they may be fixed or fastened to any part of the premises in which they may be situated; and

(b) shall not be subject to arrest or be liable to be taken in execution under -

(i) process of any court;

(ii) any proceedings in bankruptcy, insolvency or winding-up; or

(iii) any proceedings under the Loi Ayant Rapport aux Débiteurs et à la Renonciation 1929<sup>d</sup>,

against a person in whose possession they may be."

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<sup>d</sup> Ordres en Conseil Vol. VIII, p. 310.

**The Dwellings Profits Tax  
(Suspension of Law)  
(Guernsey) Ordinance, 2009**

THE STATES, in pursuance of their Resolution of the 28<sup>th</sup> January, 2009<sup>a</sup>, and in exercise of the powers conferred on them by section 29 of the Dwellings Profits Tax (Guernsey) Law, 1975<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

**Suspension of Law.**

1. The operation of the Dwellings Profits Tax (Guernsey) Law, 1975, as amended ("**the Law**") is suspended during the period of operation of this Ordinance.

**Savings for previous operation of Law.**

2. Section 1 does not -

- (a) affect the previous operation of the Law or anything done or suffered under it,
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Law,
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the Law,  
or

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<sup>a</sup> Article XII of Billet d'État No. II of 2009.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 91.

- (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance had not been passed.

**Citation.**

3. This Ordinance may be cited as the Dwellings Profits Tax (Suspension of Law) (Guernsey) Ordinance, 2009.

**Commencement.**

4. This Ordinance shall come into force on the 25<sup>th</sup> March, 2009.



**The Income Tax (Guernsey)**  
**(Approval of Agreement with United Kingdom)**  
**Ordinance, 2009**

**THE STATES**, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975, as amended<sup>a</sup>, and all other powers enabling them in that behalf, hereby order:-

**Approval of Agreement.**

1. The agreement providing for the obtaining and exchanging of information in relation to tax made between the States of Guernsey and the government of the United Kingdom, signed at London on the 20<sup>th</sup> January, 2009, is, pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

**Citation.**

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with United Kingdom) Ordinance, 2009.

**Commencement.**

3. This Ordinance shall come into force on the 25<sup>th</sup> March, 2009.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII).