

PROJET DE LOI

ENTITLED

The Conditions of Employment (Alderney) Law, 2021

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The Conditions of Employment (Alderney) Law, 2021

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 17th day of March, 2021, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

Written particulars of terms of employment.

1. (1) Not later than four weeks after the beginning of an employee's period of employment with an employer or, where such employment has begun before the coming into force of this Law, then within four weeks after its coming into force, the employer shall give to the employee a written statement in accordance with the succeeding provisions of this section.

(2) An employer shall in a statement under this section –

(a) identify the parties, and

(b) specify the date when the employment began.

(3) A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given, that is to say –

- (a) the scale or rate of remuneration, or the method of calculating remuneration (including overtime rates, shift pay and other pecuniary benefits),
- (b) the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),
- (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
- (d) any terms and conditions relating to –
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
 - (iii) pensions and pension schemes,
- (e) the length of notice which the employee is obliged to give and entitled to receive to determine the contract of employment,

- (f) the title of the job which the employee is employed to do, and
- (g) any terms and conditions relating to maternity pay, maternity leave and the employee's right to return to that job after confinement.

Supplementary provisions relating to statements under section 1.

2. (1) If there are no particulars to be entered under any of the paragraphs of subsection (3) of section 1 of this Law, or under any of the heads of paragraph (d) of the aforesaid subsection (3) of that section, that fact shall be stated.

(2) If the contract of employment is for a fixed term, the statement given under section 1 of this Law shall state the date when the contract expires.

(3) A statement given under section 1 of this Law may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities to read in the course of employment or which is made reasonably accessible to that employee in some other way.

Statements of pay.

3. (1) An employer who, pursuant to a contract of employment, is obliged to pay remuneration to an employee shall, on or before the day on which, pursuant to the contract, the remuneration is payable, give the employee a statement (a "**statement of pay**") which conforms with subsections (2) and (3).

(2) The statement of pay shall specify –

- (a) the gross amount of remuneration which, pursuant to the contract, is payable to the employee on that day,
- (b) the amount of each deduction made therefrom,
- (c) the matters in respect of which each deduction is made,
- (d) the aggregate amount of all deductions,
- (e) the net amount of remuneration payable (being the difference between the amounts referred to in paragraphs (a) and (d)), and
- (f) the date on which the net amount of remuneration is to be paid.

(3) The statement of pay shall be in writing.

(4) For the purposes of subsection (2)(a), the gross amount of an employee's remuneration includes payments for overtime, shift pay and any other pecuniary benefit payable pursuant to the contract of employment.

Changes in terms of employment.

4. (1) If, after the date to which a statement given under section 1 of this Law relates, there is a change in the terms of employment to be included, or referred to, in that statement, the employer shall, not more than four weeks after the change, inform the employee of the nature of the change by a written statement and, if the employer does not leave a copy of the statement with the employee, shall

preserve the statement and ensure that the employee has reasonable opportunities to read it in the course of employment, or that it is made reasonably accessible to that employee in some other way.

(2) A statement given under subsection (1) of this section may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities to read in the course of employment, or which is made reasonably accessible to that employee in some other way.

(3) Where, after an employer has given to an employee a written statement in accordance with section 1 of this Law, the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, and the change does not involve any change in the terms (other than the name of the employer) included or referred to in the statement, then the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 1, but the change shall be treated as a change falling within subsection (1) of this section.

Exclusion of certain contracts in writing.

5. Sections 1 and 4 of this Law shall not apply to an employee if and so long as the following conditions are fulfilled in relation to that employee, that is to say –

- (a) the employee's contract of employment is a contract which has been reduced to writing in one or more documents and which contains express terms affording the particulars to be given under each of the paragraphs in subsections (2) and (3) of section 1 of this

Law, and under each head of paragraph (d) of the aforesaid subsection (3) of that section, and

- (b) there has been given to the employee a copy of the contract (with any variations made from time to time), or that employee has reasonable opportunities to read such copy in the course of employment, or such a copy is made reasonably accessible to that employee in some other way,

provided that if at any time after the beginning of an employee's period of employment these conditions cease to be fulfilled in relation to that employee, the employer shall give the employee a written statement under section 1 of this Law not more than four weeks after that time.

Employment outside Alderney.

6. Sections 1 to 4 of this Law do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside Alderney, unless the employee ordinarily works in Alderney and the work outside Alderney is for the same employer.

Mariners.

7. Sections 1 to 5 of this Law do not apply to –

- (a) a person employed as a master of or a seaman on a sea-going British ship having a gross registered tonnage of eighty tons or more, including a person ordinarily employed as a seaman who is employed in or about such a ship in port by the owner or charterer of the

ship to do work of a kind ordinarily done by a seaman on such a ship while it is in port, or

- (b) a person employed as a skipper of or a seaman on a fishing boat for the time being required to be registered under Part II of the Register of British Ships in Guernsey maintained in accordance with section 8 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^a by the registrar (within the meaning of that section).

Employment of spouse or civil partner.

8. Sections 1, 3 and 4 of this Law do not apply to employment where the employer is the spouse or civil partner of the employee unless the parties to the marriage or civil partnership are separated pursuant to an order for judicial separation, or an order for legal separation, as the case may be.

Application of sections 1 to 4 to excluded employment.

9. Sections 1 to 4 of this Law shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by or under sections 7 and 8 of this Law as if a period of employment terminated or began at that time.

Offences.

10. (1) An employer who fails to comply with any provision of section 1, 2, 3, 4 or 5 is guilty of an offence and liable on summary conviction to a

^a Ordres en Conseil Vol. VIII of 2004; amended by No. I of 2000; No. XIII of 2010; No. VIII of 2015; Ordinance No. XXXIII of 2003; No. XXXV of 2009; No. LIV of 2012; and No. IX of 2016.

fine not exceeding level 4 on the uniform scale.

(2) Proceedings under subsection (1) are without prejudice to any civil proceedings that may lie against the employer.

Powers of enforcement.

11. (1) Where any person ("P") authorised in writing in that behalf by the Committee (whether by name, class or description) has reasonable cause to suspect that an employer has failed to comply with any provision of section 1, 2, 3, 4 or 5, P may enter, at any reasonable time, any land –

- (a) which is occupied by the employer, or
- (b) where the employment in question is being undertaken, or
- (c) where there is believed to be any evidence relevant for determining whether or not there has been a failure to comply with any such provision,

taking such other persons as P may think fit, and, for the purpose of investigating the suspected failure to comply, P and any person accompanying P may –

- (i) require any person thereon to reply to such questions, to furnish such information and documents and to provide such assistance as P considers to be necessary for the purposes of investigating the suspected failure to comply,

- (ii) take copies or extracts of any such documents,
- (iii) seize any such documents, or take any other steps necessary to preserve them or protect them from interference, if P suspects that they may otherwise be destroyed, damaged, tampered with or removed,
- (iv) require any person to give an explanation of any such documents or of anything in them, and
- (v) in relation to any documents which are not furnished to P in accordance with such requirements, require any person to state to the best of that person's knowledge and belief their whereabouts.

(2) A person seeking to exercise any power conferred by this section in relation to any land shall, if so requested by the owner or occupier of the land, furnish evidence of office or authority.

(3) Any documents seized pursuant to the powers conferred by this section may be retained for a period of 3 months or, if proceedings to which those documents are relevant are instituted within that period, until the conclusion of those proceedings.

(4) A person who, without reasonable excuse, proof whereof shall lie on that person –

- (a) fails to produce or furnish any information or document in accordance with any requirement imposed under this section,
- (b) obstructs or fails to give all reasonable assistance to, or fails to comply in all respects with any requirement made of that person by, any person exercising or purporting to exercise any power or authority conferred by or under this section,
- (c) destroys, mutilates, defaces, secretes or removes any document with intent to evade the provisions of this Law relating to inquiry, investigation, search and seizure, or
- (d) in compliance or purported compliance with any requirement imposed under this section –
 - (i) makes a statement knowing or with reasonable cause to believe that statement to be false, deceptive or misleading in a material particular,
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (iii) produces or furnishes or causes or permits to be produced or furnished any information or

document knowing or with reasonable cause to believe that information or document to be false, deceptive or misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both; and the court convicting that person may, in addition to imposing any such penalty, where the offence involved a failure to produce or furnish any information or document, to give assistance to any person or to comply with any requirement made by any person, order the person convicted, within such period as may be specified, to produce or furnish the information or document, to give the assistance or to comply with the requirement in question.

(6) An appeal lies from an order of the court under subsection (5) in the same manner as if it were a penalty imposed upon conviction.

(7) No authorised person shall be obliged to divulge the reasons for belief or suspicion when exercising powers under this section.

(8) Subject to subsection (9), no obligation or duty of secrecy or of confidence, nor any other restriction on the disclosure of information to which a person is subject, whether imposed by statute, contract or otherwise, shall be regarded as being contravened by reason of the compliance by that person with a requirement imposed under this section.

(9) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by or to that advocate or legal adviser in that capacity.

(10) A statement made by a person ("A") in compliance with a requirement imposed under this section –

(a) may be used in evidence against A in proceedings other than criminal proceedings, and

(b) may not be used in evidence against A in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of A, or

(ii) in proceedings for –

(A) an offence under subsection (4),

(B) some other offence where, in giving evidence, A makes a statement

inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(11) In this section "**the Committee**" means the States of Alderney Policy & Finance Committee.

Interpretation.

12. In this Law, except where the context otherwise requires –

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

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

"**employer**", in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed,

"**employment**" means employment under a contract of employment, and

"**job**", in relation to an employee, means the nature of the work which that person is employed to do in accordance with a contract and the capacity and place in which that person is so employed.

Citation.

13. This Law may be cited as the Conditions of Employment (Alderney) Law, 2021.

Commencement.

14. This Law shall come into force on the expiration of the period of two months commencing on the date on which it is registered on the records of the Island of Alderney.