

## **Article 22 of the Constitution of the ILO**

Report for the period from 2 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### **RIGHT OF ASSOCIATION (AGRICULTURE) CONVENTION (NO. 11)**

(extension registered on 6 August 1923)

#### **PART I**

The legislation which is relevant to the Convention is as follows:

The Human Rights (Bailiwick of Guernsey) Law, 2000 (Freedom of Association)

The Employment Protection (Guernsey) Law, 1998

#### **PART II**

##### Article 1

Section 1(2) of the Human Rights (Bailiwick of Guernsey) Law, 2000 gives effect to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November, 1950.

The only caveat to the right to freedom of assembly and association in that Law is as follows:

*No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

There are no substantive or formal conditions in force that must be fulfilled by workers' and employers' organisations when they are established and there are no special legal provisions regarding the establishment of organisations of any category of workers.

The employment of employees is protected to the following extent by section 8(1) of the Employment Protection (Guernsey) Law, 1998:

(1) *The dismissal of an employee by an employer shall be regarded... as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –*

(a) *was, or proposed to become, a member of an independent trade union,*

- (b) *had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or*
- (c) *was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.*

### **PART III**

Primary responsibility rests with the Committee for Employment and Social Security within which there is an Employment Relations Service.

The Service is responsible for the support and facilitation of good organisational employment practices and where necessary dispute resolution in both the private and the public sectors. It achieves this through the ongoing provision of confidential advisory, conciliation and arbitration services, the administration and enforcement of employment protection legislation and managing both the Employment and Discrimination and Industrial Disputes tribunals.

### **PART IV**

There have been no relevant decisions.

### **PART V**

It is a generally accepted principle that employees can choose to organise or not to organise and it is not a significant issue across the economic sectors of the Island.

For example, Employment Tribunals have been available in relation to unfair dismissal since the relevant legislation was brought into effect in 1999. Since that time, there have been no referrals on the grounds of membership of an employee's organisation.

### **PART VI**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

States of Guernsey  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
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GY1 1FH

July 2016

## Article 22 of the Constitution of the ILO

Report for the period from 1 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### WORKMEN'S COMPENSATION (AGRICULTURE) CONVENTION, 1921 (NO. 12)

(extension registered on 6<sup>th</sup> August 1923)

- I. There has been no new legislation applying the provisions of this Convention, nor any new administrative regulations since the last reporting period.
- II. The constitutional provisions by which the ratification of this Convention has had effect are:
  - a. Article 1 of the Convention is applied in Guernsey under the Social Insurance (Guernsey) Law, 1978, as amended, which provides for equal treatment of all insured employed persons without regard to nationality or length of residence.
    - i. Since the previous report to the Committee in August 2011, the Social Insurance legislation was amended by the Social Insurance (Guernsey) (Amendment) Law, 2016. This Law amends the meaning of “Pensionable age” for the purpose of establishing pensionable age and increasing the age at which old age pension will be paid. Through this amendment pensionable age will increase gradually from 65 to 70, between 2020 and 2049.
    - ii. The States of Guernsey have reorganised their Committee system. The functions of the former Guernsey Social Security Department have been transferred, with other functions, to the Committee *for* Employment & Social Security. The Organisation of States’ Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016) refers.

#### III. a. Authority

The social insurance legislation in Guernsey has, in the main, two statutory authorities entrusted with its administration. The first is the Guernsey Committee *for* Employment & Social Security. The second is the Office of the Administrator.

#### b. Organisation and working of inspection

The Committee for Employment & Social Security has an active inspectorate that ensures contributions compliance by individuals and employers.

- IV There have been no relevant decisions.

**V. a. Manner in which the Convention is applied**

The requirements of the Convention are given effect by the Social Insurance (Guernsey) Law, 1978, as amended.

**VI. Reports and observations**

No reports have been produced under Article 19 of the ILO Constitution.

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

29 July 2016

Documents appended:

The Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016.

Social Insurance (Amendment) Law, 2016

## Article 22 of the Constitution of the ILO

Report for the period from 1 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### WORKMAN'S COMPENSATION (ACCIDENTS) CONVENTION, 1921 (No.17)

(extension registered on 28<sup>th</sup> June 1949)

- IV. There has been no new legislation applying the provisions of this Convention, nor any new administrative regulations since the last reporting period.
- V. The constitutional provisions by which the ratification of this Convention has had effect are:
- a. Article 1 of the Convention is applied in Guernsey under the Social Insurance (Guernsey) Law, 1978, as amended, which provides for equal treatment of all insured employed persons without regard to nationality or length of residence.
  - j. Since the previous report to the Committee in August 2011, the Social Insurance legislation was amended by the Social Insurance (Guernsey) (Amendment) Law, 2016 This Law amends the meaning of “Pensionable age” for the purpose of establishing pensionable age and increasing the age at which old age pension will be paid. Through this amendment pensionable age will increase gradually from 65 to 70, between 2020 and 2049.
  - ii. The States of Guernsey have reorganised their Committee system. The functions of the former Guernsey Social Security Department have been transferred, with other functions, to the Committee *for* Employment & Social Security. The Organisation of States’ Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016) refers.

#### VI. a. Authority

The social insurance legislation in Guernsey has, in the main, two statutory authorities entrusted with its administration. The first is the Guernsey Committee *for* Employment & Social Security. The second is the Office of the Administrator.

#### b. Organisation and working of inspection

The Committee for Employment & Social Security has an active inspectorate that ensures contributions compliance by individuals and employers.

IV There have been no relevant decisions.

#### V. a. Manner in which the Convention is applied

The requirements of the Convention are given effect by the Social Insurance (Guernsey) Law, 1978, as amended.

## **VI. Reports and observations**

No reports have been produced under Article 19 of the ILO Constitution. No reports in accordance with article 23, paragraph 2 of the Constitution have been communicated.

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

29 July 2016

Documents appended:

The Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016.

Social Insurance (Amendment) Law, 2016

## Article 22 of the Constitution of the ILO

Report for the period from 1 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### **EQUALITY OF TREATMENT (ACCIDENT COMPENSATION) CONVENTION, 1925 (No.19)**

(extension registered on 6<sup>th</sup> October 1926)

As this is not a first report to the Committee, this document only refers to articles of the Convention under which changes to legislation have been made since 2011.

- I. There has been no new legislation applying the provisions of this Convention, nor any new administrative regulations since the last reporting period.
- II. The constitutional provisions by which the ratification of this Convention has had effect are:

Article 1 of the Convention is applied in Guernsey under the Social Insurance (Guernsey) Law, 1978, as amended, which provides for equal treatment of all insured employed persons without regard to nationality or length of residence.

- ii. Since the previous report to the Committee in August 2011, the Social Insurance legislation was amended by the Social Insurance (Guernsey) (Amendment) Law, 2016. This Law amends the meaning of “Pensionable age” for the purpose of establishing pensionable age and increasing the age at which old age pension will be paid. Through this amendment pensionable age will increase gradually from 65 to 70, between 2020 and 2049.
- iii. The States of Guernsey have reorganized their Committee system. The functions of the former Guernsey Social Security Department have been transferred, with other functions, to the Committee for Employment & Social Security. The Organisation of States’ Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016) is also cited in the Social Insurance (Guernsey) Law, 1978.

Article 4. Benefit rates have been increase by at least the Guernsey Index of Retail Prices, otherwise no relevant change.

#### ***Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013)***

*The Committee notes that the Government’s report, received in September 2011, refers to a number of bilateral social security agreements. **The Committee would be grateful if the Government would indicate in its next report the arrangements governing the payment of accident compensation benefits in the event of residence abroad with regard to nationals of countries which have ratified***

*Convention No. 19 but have not concluded a bilateral social security agreement with Guernsey. Please also provide, as required by Part V of the report form, information, including statistics, on the manner in which effect is given to the Convention in practice, specifying, for instance, the number, nationality and occupational distribution of foreign workers employed in Guernsey, the number and nature of accidents involving foreign workers, and the amount of accident compensation benefits paid to persons residing abroad, indicating the country of destination.*

With the exception of industrial disablement benefit, there are currently no arrangements in place that enable the payment of accident compensation benefits, such as industrial injury benefit and industrial medical benefit, under the Social Insurance (Guernsey) Law, 1978 in the event of residence abroad with regard to nationals of countries which have ratified Convention No. 19, but have not concluded a bilateral social security agreement with Guernsey.

Industrial disablement benefit can be paid to persons who reside abroad in accordance with the Social Insurance (Guernsey) Law, 1978 and Regulations made thereunder.

No relevant statistics are produced.

### **III. a. Authority**

The Social Insurance legislation in Guernsey has, in the main, two statutory authorities entrusted with its administration. The first is the Guernsey Committee for Employment & Social Security. The second is the Office of the Administrator.

### **b. Organisation and working of inspection**

The Committee for Employment & Social Security has an active inspectorate that ensures contributions compliance by individuals and employers.

IV. No relevant decisions have been made.

V. As the Law relates to all employees without distinction, no statistics are available in respect of foreign workers.

The requirements of the Convention are given effect by the Social Insurance (Guernsey) Law, 1978, as amended.

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

29 July 2016



## **Article 22 of the Constitution of the ILO**

Report for the period from 1 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### **SICKNESS INSURANCE (INDUSTRY) CONVENTION, 1927 (No.24)**

(extension registered on 20<sup>th</sup> February 1931)

As this is not the first report to the Committee, this document only refers to articles of the Convention under which changes to legislation have been made since 2011.

- I. There has been no new legislation applying the provisions of this Convention, nor any new administrative regulations since the last reporting period. No documents are required for filing with this Report.
- II. The constitutional provisions by which the ratification of this Convention has had effect are:

Article 1 of the Convention is applied in Guernsey under the Social Insurance (Guernsey) Law, 1978, as amended, which provides for equal treatment of all insured employed persons without regard to nationality or length of residence.

- i. Since the previous report to the Committee in August 2011, the Social Insurance legislation was amended by the Social Insurance (Guernsey) (Amendment) Law, 2016. This Law amends the meaning of “Pensionable age” for the purpose of establishing pensionable age and increasing the age at which old age pension will be paid. Through this amendment pensionable age will increase gradually from 65 to 70, between 2020 and 2049.
- ii. The States of Guernsey have reorganised their Committee system. The functions of the former Guernsey Social Security Department have been transferred, with other functions, to the Committee *for* Employment & Social Security. The Organisation of States’ Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016) refers.
- iii. Since the previous report to the Committee in August 2011, the Health Service (Specialist Medical Benefit) Ordinance, 1990 was amended to include additional medical services. In 2013, provision was made to include treatment by an approved visiting UK medical specialist, and in 2014 consultancy by an approved primary care mental health and wellbeing practitioner was added to the medical services provided.

Article 2 No relevant change.

Article 3 No relevant change.

Article 4 No relevant change.

Article 5 Changes to the Health Service (Specialist Medical Benefit) Ordinance, 1990 refer.

Article 6 No relevant change.

Article 7 No relevant change.

Article 8 No relevant change.

Article 9 No relevant change.

Article 10 No relevant change.

**III.** There have been no relevant decisions.

**IV. a. Manner in which the Convention is applied**

The requirements of the Convention are given effect by the Social Insurance (Guernsey) Law, 1978, as amended and the Health Service (Benefit) (Guernsey) Law, 1990. Under the latter Law a number of benefits may be available depending on eligibility, including Medical Benefit, Specialist Medical Benefit, Medical Appliances Benefit and Pharmaceutical Benefit.

**b. Statistics**

No relevant statistics are available.

**V. Reports and observations**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employers' and workers' organisations.

29 July 2016

## **Article 22 of the Constitution of the ILO**

Report for the period from 1 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### **SICKNESS INSURANCE (AGRICULTURE) CONVENTION, 1927 (NO.25)**

(extension registered on 20<sup>th</sup> February 1931)

As this is not the first report to the Committee, this document only refers to articles of the Convention under which changes to legislation have been made since 2011.

- VII. There has been no new legislation applying the provisions of this Convention, nor any new administrative regulations since the last reporting period. No documents are required for filing with this Report.
- VIII. The constitutional provisions by which the ratification of this Convention has had effect are:
- a. Article 1 of the Convention is applied in Guernsey under the Social Insurance (Guernsey) Law, 1978, as amended, which provides for equal treatment of all insured employed persons without regard to nationality or length of residence.
    - i. Since the previous report to the Committee in August 2011, the Social Insurance legislation was amended by the Social Insurance (Guernsey) (Amendment) Law, 2016 This Law amends the meaning of “Pensionable age” for the purpose of establishing pensionable age and increasing the age at which old age pension will be paid. Through this amendment pensionable age will increase gradually from 65 to 70, between 2020 and 2049.
      1. The States of Guernsey have reorganized their Committee system. The functions of the former Guernsey Social Security Department have been transferred, with other functions, to the Committee *for* Employment & Social Security. The Organisation of States’ Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016) refers.
      2. Since the previous report to the Committee in August 2011, the Health Service (Specialist Medical Benefit) Ordinance, 1990 was amended. To include additional medical services. In 2013, provision was made to include treatment by an approved visiting UK medical specialist, and in 2014 consultancy by an approved primary care mental health and wellbeing practitioner was added to the medical services provided.
  - b. Article 2. No relevant change.
  - c. Article 3. No relevant change.

- d. Article 4. Benefit rates have been increased by at least the Guernsey Index of Retail Prices, otherwise no relevant change.
- e. Article 5. No relevant change.
- f. Article 6. No relevant change.
- g. Article 7. No relevant change.
- h. Article 8. No relevant change.
- i. Article 9. No relevant change.

IX. No relevant decisions have been given.

**X. a. Manner in which the Convention is applied**

The requirements of the Convention are given effect by the Social Insurance (Guernsey) Law, 1978, as amended and the Health Service (Benefit) (Guernsey) Law, 1990. Under the latter Law a number of benefits may be available depending on eligibility, including Medical Benefit, Specialist Medical Benefit, Medical Appliances Benefit and Pharmaceutical Benefit.

**b. Statistics**

No statistics relating to the number of persons covered, the cost of benefit in cash or kind, the number of cases or the cost of application of the legislation are available.

**XI. Reports and observations**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

29 July 2016

Documents appended:

Health Service (Specialist Medical Benefit) (Amendment) Ordinance, 2013

Health Service (Specialist Medical Benefit) (Amendment) Ordinance, 2014

## **Article 22 of the Constitution of the ILO**

Report for the period from 2 September 2013 to 31 August 2016 made by the States of Guernsey

on the

### **FORCED LABOUR CONVENTION, 1930 (No. 29)**

(extension registered on 3 June 1931)

#### **Part I**

There have been no changes to the legislative and administrative regulations which apply the provisions of the Convention in Guernsey or to the measures taken by the authorities to ensure the application of the relevant Articles since the report submitted in 2013.

#### **Part II**

There have been no changes to the legislative and administrative regulations which apply the provisions of the Convention in Guernsey or to the measures taken by the authorities to ensure the application of the relevant Articles since the report submitted in 2013.

#### **Part III**

There have been no relevant decisions.

#### **Part IV**

There have been no practical difficulties in the implementation of the Convention.

#### **Part V**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

July 2016

## Article 22 of the Constitution of the ILO

Report for the period from 1 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### WORKMEN'S COMPENSATION (OCCUPATIONAL DISEASES) CONVENTION (REVISED), 1934 (NO.42)

(extension registered on 29 April 1936)

As this is not a first report to the Committee, this document only refers to articles of the Convention under which changes to legislation have been made since 2011.

- I** There has been no new legislation applying the provisions of this Convention, nor any new administrative regulations, since the last reporting period. No documents are required for filing with this Report.
- II** The constitutional provisions by which the ratification of this Convention has had effect are:

Article 1 of the Convention is applied in Guernsey under the Social Insurance (Guernsey) Law, 1978, as amended, which provides for equal treatment of all insured employed persons without regard to nationality or length of residence.

- i. Since the previous report to the Committee in August 2011, the Social Insurance legislation was amended by the Social Insurance (Guernsey) (Amendment) Law, 2016 for the Law amends the meaning of "Pensionable age" for the purpose of establishing pensionable age and increasing the age at which old age pension will be paid. Through this amendment pensionable age will increase gradually from 65 to 70, between 2020 and 2049.
- ii. The States of Guernsey have reorganized their Committee system. The functions of the former Guernsey Social Security Department have been transferred, with other functions, to the Committee for Employment & Social Security. The Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016) refers.

Article 2. No relevant change.

#### ***Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013)***

*In reply to the Committee's previous comment, the Government indicates that given the passage of time since the schedule of occupational diseases was brought into line with that of the United Kingdom (2003), it is appropriate for the Social Security Department to consider any differences that exist in this area between Guernsey and the United Kingdom and give due consideration to the suggestions made by the Committee. **Noting this information, the Committee wishes to refer the Government to the direct request it***

*addresses to the United Kingdom in respect of Convention No. 42 and hopes that the Government's future reports would indicate measures taken to update the list of occupational diseases and the system ensuring compensation of occupational injuries.*

There are no relevant updates available.

***Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013)***

*The Committee notes that the Government's report, received in September 2011, refers to a number of bilateral social security agreements. The Committee would be grateful if the Government would indicate in its next report the arrangements governing the payment of accident compensation benefits in the event of residence abroad with regard to nationals of countries which have ratified Convention No. 19 but have not concluded a bilateral social security agreement with Guernsey. Please also provide, as required by Part V of the report form, information, including statistics, on the manner in which effect is given to the Convention in practice, specifying, for instance, the number, nationality and occupational distribution of foreign workers employed in Guernsey, the number and nature of accidents involving foreign workers, and the amount of accident compensation benefits paid to persons residing abroad, indicating the country of destination.*

With the exception of industrial disablement benefit, there are currently no arrangements in place that enable the payment of accident compensation benefits, such as industrial injury benefit and industrial medical benefit, under the Social Insurance (Guernsey) Law, 1978 in the event of residence abroad with regard to nationals of countries which have ratified Convention No. 19, but have not concluded a bilateral social security agreement with Guernsey.

Industrial disablement benefit can be paid to persons who reside abroad in accordance with the Social Insurance (Guernsey) Law, 1978.

No relevant statistics are produced.

### **III a. Authority**

The Social Insurance legislation in Guernsey has, in the main, two statutory authorities entrusted with its administration. The first is the Guernsey Committee *for* Employment & Social Security. The second is the Office of the Administrator.

### **b. Organisation and working of inspection**

The Committee *for* Employment & Social Security has an active inspectorate that ensures contributions compliance by individuals and employers.

The extended responsibilities of the Committee now include the Health and Safety Executive which has statutory responsibility for ensuring compliance with legislation and standards concerning safety in the workplace.

**IV.** No relevant decisions have been given.

**V. a. Manner in which the Convention is applied**

The requirements of the Convention are given effect by the Social Insurance (Guernsey) Law, 1978, as amended and associated Regulation.

**VI. Reports and observations**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

29 July 2016



## Article 22 of the Constitution of the ILO

Report for the period from 1 September 2013 to 30 June 2016 made by the States of Guernsey

on the

### LABOUR INSPECTION CONVENTION, 1947 (No. 81) (extension registered on 28 June 1949)

#### Part I

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A comprehensive system of labour inspection, focussed on the **health and safety of workers**, is in place in Guernsey, with the following legal provisions forming the basis of the system of labour inspection for all sectors of the economy, including, but not restricted to, industrial and commercial activities:<sup>1</sup>

- Loi relative aux Explosifs, 1905 (Amended 1905, 1913, 1914 & 1951)
- Loi relative aux Substances Explosives, 1939 (Amended 1976)
- Loi relative aux Huiles ou Essences Minérales, ou autres substances de la même nature, 1925 (Amended 1927 & 1994)
- Ordonance relative aux Huiles ou Essences Minérales, ou autres substances de la même nature, 1932 (Amended 1934, 1948, 1993 & 1994)
- Health, Safety and Welfare of Employees Law, 1950
- Steam Boilers (Insurance) Ordinance, 1952
- Safety of Employees (Miscellaneous Provisions) Ordinance, 1952
- Quarries (Safety) Ordinance, 1954
- Safety of Employees (Growing Properties) Ordinance, 1954
- Safety of Employees (First Aid and Welfare) Ordinance, 1954
- Safety of Employees (Electricity) Ordinance, 1956
- Safety of Employees (Ionising Radiations) Ordinance, 1957
- Public Highways Ordinance, 1967 (Amended 1993)
- Safety of Pits Ordinance, 1973
- Health and Safety at Work etc (Guernsey) Law, 1979
- Health and Safety at Work (General) (Guernsey) Ordinance, 1987
- Health and Safety at Work (Prescribed Diseases) (Guernsey) Regulations, 1987
- Health and Safety at Work (Dangerous Substances) (Guernsey) Regulations, 1987
- Health and Safety at Work (Highly Flammable Liquids) (Guernsey) Regulations, 1988

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<sup>1</sup> All health and safety legislation can be found on the Guernsey Court official legal resources: Laws <<http://www.guernseylegalresources.gg/article/91514/Health-and-Safety>> or Ordinances <<http://www.guernseylegalresources.gg/article/91511/Health-and-safety>>.

- The Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989
- The Uniform Scale of Fines (Bailiwick of Guernsey) (Amendment) Ordinance, 1991
- Health and Safety at Work (Freight Containers Safety Convention) Ordinance, 1992
- Health and Safety at Work (Fees) Law, 1993
- Employer’s Liability (Compulsory Insurance) (Guernsey) Law, 1993
- Employer’s Liability (Compulsory Insurance) (Commencement) Ordinance, 1994
- Employer’s Liability (Compulsory Insurance) (General Provisions) Ordinance, 1994
- Poisonous Substances (Guernsey) Law, 1994
- Health and Safety at Work (Dangerous Substances) (Guernsey) Regulations, 1995
- Managing Health and Safety in Construction, Approved Code of Practice 1995
- Employer’s Liability (Compulsory Insurance) (Subsidiary Companies) Ordinance, 1997
- The Uniform Scale of Fines (Bailiwick of Guernsey) (Amendment) Ordinance, 1998
- Public Highways (Temporary Closure) Ordinance, 1999
- Employer’s Liability (Compulsory Insurance) (Exemptions) Ordinance, 2009
- Transfrontier Shipment of Waste Ordinance, 2002
- The Health and Safety (Gas) (Guernsey) Ordinance, 2006 and approved Code of Practice
- The Uniform Scale of Fines (Bailiwick of Guernsey) (Amendment) Ordinance, 2006
- Control of Asbestos, Approved Code of Practice 2013
- Control of Poisonous Substances (Guernsey) Regulations, 2014 (amended 2016)
- Health and Safety (Fees) Order, 2015

## **Part II**

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### **Article 2**

The Health and Safety Executive (HSE), an operational unit of the States of Guernsey Committee *for* Employment & Social Security, is responsible for inspections under this Convention.

The system of inspection under the legislation referred to in Part I of this report extends generally to all premises and work activities in all sectors. The make-up of Guernsey’s economy is focussed on tertiary activities: the finance industry (21.5%), public administration (17.2%), retail (12.5%) and hospitality (6.1%). There is little agricultural or horticultural activity (1.3%), manufacturing (2.1%) utilities (1.2%) and construction (9%).<sup>2</sup>

There is a specific exemption in relation to the employment of a domestic servant in a private household (0.3%).

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<sup>2</sup> States of Guernsey Policy Council (2016), Guernsey Quarterly Labour Market Bulletin Quarter 4 2015, <<https://gov.gg/population>> accessed on 26 July 2016.

### **Article 3**

The Health and Safety Executive (HSE) fulfils the functions of the labour inspectorate in Guernsey. Its primary function is to secure the health, safety and welfare of people at work and to protect others from risks to health and safety from work activity. HSE are responsible for regulating work-related health and safety in Guernsey and work in partnership with other regulators and States services, particularly in relation to public safety.

HSE regulates health and safety across a range of sectors and industries including major hazard sites such as onshore gas and petroleum installations through to more conventional sites, including quarries; farms; factories; waste management; construction; services; retail; hospitality and healthcare. HSE do this by applying an appropriate and proportionate mix of intervention techniques including inspection, advice and support, awareness-raising activities and, where necessary, enforcement notices and recommending prosecution.

There is no legislation in Guernsey restricting hours of work, but working conditions, workers' welfare and employment of young persons and children are regulated.

The HSE have no responsibility for enforcing wages or contractual relationships between employers and employees. This is the remit of the States of Guernsey Employment Relations Service, itself a regulatory unit of the States of Guernsey Committee *for* Employment & Social Security.

Due to the small size of the inspectorate, HSE have limited expertise focused on local business activities. The States of Guernsey have a formal Letter of Understanding with the UK Health and Safety Executive to provide additional support and expertise to enable the discharge of the functions required under the Convention.

Inspectors have additional duties in relation to the health and safety of the public, when they are affected by work activities, including petroleum, explosives, pesticides and gas. With adequate resources, the additional functions are not anticipated to impact the primary labour inspection functions of the inspectorate.

### **Article 4**

Labour inspection in Guernsey is under the supervision and control of the States of Guernsey Committee *for* Employment & Social Security.<sup>3</sup> The Committee is responsible for the adequate resourcing of the HSE, its operational labour inspectorate, and for developing health and safety policy and strategy to ensure compliance with the Convention.

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<sup>3</sup> States of Guernsey, Employment and Social Security, <<https://gov.gg/article/152827/Employment--Social-Security>> accessed on 26 July 2016.

The Committee has limited regulation making powers under the statutory provisions, but may propose major legislative changes to the States of Deliberation (Guernsey's parliament).

## **Article 5**

The staff of the Health and Safety Executive maintains regular contacts with relevant staff of the other government services and with the private sector, including private sector organisations that provide health and safety related services. Such contacts are both formal and informal, depending on the circumstances. Due to recent changes in the organisation of the Guernsey Government, regulatory services reporting lines have changed and it is the intention of the States of Guernsey to provide high-level coordination for regulatory activities in the medium term (next 4 years).

There is thorough consultation with interested parties on any changes in legislation that are proposed or any codes of practice that were to be introduced.

## **Article 6**

Inspectors are employed on a permanent full-time basis in accordance with the normal terms and conditions of the employment of civil servants by the States of Guernsey. There is no particular security of tenure by virtue of the office for the inspectors outside their contract of employment and established staff directives.<sup>4</sup>

There are no political parties in Guernsey and the Government consists entirely of independent members. Unlike the United Kingdom or other similar jurisdictions, a change of government does not disproportionately affect the approach to labour inspection. That said, the recent restructuring of the government of Guernsey has changed the reporting lines from the Commerce and Employment Department to the Committee *for* Employment & Social Security.

## **Article 7**

As civil servants, inspectors are recruited in accordance with the States of Guernsey recruitment process, against key criteria that are set by the States of Guernsey Competency Framework and the job specifications. The standard qualification for all inspectors is a post-graduate diploma in regulatory occupational health and safety.

There are two routes for recruitment:

- Qualified inspectors are employed on the basis of university qualifications and experience in the field of health and safety regulatory inspection.

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<sup>4</sup> States of Guernsey, Careers with the States of Guernsey, < <https://gov.gg/careers> > accessed on 26 July 2016.

- Trainee inspectors are also selected against key criteria and provided with initial training in the United Kingdom with the UK Health and Safety Executive. They subsequently complete the formal academic qualification (post-graduate diploma in occupational health and safety regulation) and on-the-job structured training before progressing to the full inspector role.

After qualification, inspectors undergo additional specialist training and attend relevant conferences on a regular basis. They are required to obtain and maintain membership of a recognised professional body, the Institute of Occupational Safety and Health (IOSH), including Continuing Professional Development, which is funded by the inspectorate.

### **Article 8**

It is prohibited under the Sex Discrimination (Guernsey) Ordinance, 2005 to discriminate against an individual in the work place on the basis of the person's gender. In addition under section 9A of the Employment Protection (Guernsey) Law, 1998, the dismissal of an employee by an employer is regarded as having been unfair if the dismissal constituted an act of discrimination against the employee under the Sex Discrimination Ordinance. Human rights legislation renders unlawful direct and indirect discrimination on the basis of sex, gender, marital status, race or ethnicity in the enjoyment of the rights enjoyed under that legislation. The protection provided by the legislation referred to and general practice ensure there are no legal restrictions as to the employment of men and women as inspectors.

### **Article 9**

The make-up of Guernsey's economy does not include traditional industries (see article 2 above). As such, many areas of specialism are not required. The specialisations of current staff include pesticides, health services, agriculture and horticulture, highly flammable liquids, education, construction, play equipment, explosives, quarrying, diving and asbestos.

There is no specialist medical advice for occupational health regulation retained by the inspectorate, but the Committee for Employment & Social Security has access to specialist advice through the Medical Specialist Group in Guernsey, and via its own occupational medicine advisor.

Memoranda of Understanding and Mutual Assistance are in place between the Guernsey authorities and their counterparts in Jersey and the UK which provide access to specialist inspectors and services which can be called upon to address any shortfall in local knowledge.

### **Article 10**

**\*\*** *Direct request - Noting the abovementioned trends and the slight increase in the number of workplaces liable to inspection, the Committee would be grateful if the Government would provide an evaluation of the needs of the labour inspectorate in*

*human resources in the light of the criteria provided in Article 10 of the Convention, and if it would indicate the proportion of the budget allocated to labour inspection, and the measures taken or envisaged to ensure that workplaces are inspected as often and as thoroughly as necessary (Article 16). The Committee would also be grateful if the Government would provide detailed information on the number of inspection visits per category of workplaces, and on the different types of inspections carried out during the last two years.*

Approximately £378,000 was allocated to the budget of the Health and Safety Executive in 2015. The annual gross revenue expenditure budget for the States of Guernsey in 2015 was £397.7m, the labour inspectorate therefore represents just under 0.1% of the overall government budget.<sup>5</sup>

The current establishment of the Health and Safety Executive is:

- 1 Chief Health and Safety Officer (operational inspector time 40%, management and policy 60%).
- 2 Health and Safety Inspectors.
- 0 Trainee Health and Safety Inspector.
- 1 Technical officer (not an inspector for the purpose of the Convention).
- 1 Complaints and administration officer (not an inspector for the purpose of the Convention).

To note, the HSE has seen a drop of 2 labour inspectors on the previous report submitted in 2013 which has been brought to the attention the Committee *for* Employment & Social Security.

Given the nature of the risks in the tertiary sector, in particular service activities, the inspectorate is focussed on higher areas of risks, such as construction. Further prioritisation and rationalisation of operational resources will be necessary if the current staffing levels continue.

All inspectors carry out general health and safety functions under the 1987 Ordinance, however, they may be assigned particular tasks according to their expertise. The geographical area of the Island is 25 square miles which means that all staff can be co-located.

The attached annual report provides statistics for 2013 and 2014 for the number of inspection visits per category of workplaces and on the different types of inspections carried out during the last two years.

## **Article 11**

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<sup>5</sup> States of Guernsey, Accounts 2015 <<https://gov.gg/article/154092/The-States-of-Guernsey-Accounts-2015>> accessed 26 July 2016.

Inspectors are established civil servants. As such, offices, ICT, and other equipment are provided by the government of the Island and inspectors are also provided with leased vehicles and can claim any other travel and incidental expenses that arise from their work.

Due to the small size of the island, all inspectors are located in an office, together with other government services.

## Article 12

Section 16 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 gives inspectors wide-ranging powers to enter, investigate and establish compliance with the relevant statutory provisions (see Article 1).<sup>6</sup>

**\*\*** *Direct Request - Noting that, according to the report of the Government, inspections are made during the day, the Committee would be grateful if the Government would provide a copy of the legal provisions investing labour inspectors with right of access to workplaces at any hour of the day or night, and to indicate how effect has been given to each of the provisions of Article 12.*

### Powers of inspectors.

**16.** (1) Subject to the provisions of this section, an inspector may, for the purpose of carrying into effect any of the relevant statutory provisions, exercise the powers set out in the next following subsection.

(2) The powers of an inspector referred to in subsection (1) above are the following, namely –

(a) **at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose of carrying into effect any of the relevant statutory provisions,**

(b) to take with him an officer of police, if he has reasonable cause to apprehend any serious obstruction in the execution of his duty,

(c) without prejudice to the last foregoing paragraph, on entering any premises by virtue of paragraph (a) above to take with him –

(i) any other person duly authorised in that behalf by the Committee, and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised,

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<sup>6</sup> The Health and Safety at Work (General) (Guernsey) Ordinance, 1987  
<<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=68125&p=0>> accessed 26 July 2016.

(d) to make such examination and investigation as may in any circumstances be necessary for the purpose of carrying into effect any of the relevant statutory provisions,

(e) as regards any premises which he has power to enter to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under the last foregoing paragraph,

(f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above,

(g) to take samples of any articles or substances found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises,

(h) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose of carrying into effect any of the relevant statutory provisions),

(j) in the case of any such article or substance as is mentioned in the last foregoing paragraph, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –

(i) to examine it and do to it anything which he has power to do under that paragraph,

(ii) to ensure that it is not tampered with before his examination of it is completed,

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under section 18 or 19 of this Ordinance,

(k) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) above to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers,

(l) to require the production of, inspect, and take copies of or of any entry in –

(i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept, and

(ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d) above,



(m) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control, or in relation to which that person has responsibilities, as are necessary to enable the inspector to exercise any of the powers conferred on him by this section,

(n) any other power which is necessary for the purpose of carrying into effect any of the relevant statutory provisions.

(3) Where an inspector proposes to exercise the power conferred by subsection (2)(h) above in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person, unless the inspector considers that its being done in that person's presence would be prejudicial to public safety.

(4) Before exercising the power conferred by subsection (2)(h) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(5) Where under the power conferred by subsection (2)(j) above an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power, and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) No answer given by a person in pursuance of a requirement imposed under subsection (2)(k) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(7) Nothing in this section shall be taken to compel the production by any person of a document of which he would, on grounds of legal professional privilege, be entitled to withhold production in any action in the Ordinary Court.

Inspections and investigations are normally undertaken without prior notice, and inspectors will make every effort to speak to a senior manager or director of the business involved and to identify and discuss any issues with a representative of the workers or recognised trade union representative.

### **Article 13**

Section 18 of the 1987 Ordinance provides for the inspector to require improvements within a specified period of time, where non-compliance with legal provisions is found (improvement notices).

Section 19 of the 1987 Ordinance also provides inspectors with the power to issue prohibition notices, stopping dangerous work activities. Section 19(5) of the Ordinance also provides inspectors with the power to issue a prohibition notice that has immediate effect (for 72 hours) if the inspector believes that there is an imminent risk of serious personal injury. Immediate prohibition notices are subject to confirmation by the Committee to remain in force after 72 hours. Judicial appeals are possible to the Ordinary Court of the Royal Court of Guernsey.

There are criminal penalties for non-compliance with improvement and prohibition notices.

#### **Article 14**

Section 9 of the 1987 Ordinance provides for a general obligation to report injuries, diseases and dangerous occurrences subject to certain exceptions that are specified in section 11 of the Ordinance.

The Health and Safety (Prescribed Diseases) (Guernsey) Regulations, 1987 prescribe the occupational diseases, illnesses and conditions that are reportable under Section 9.<sup>7</sup>

Details about reporting is available on the HSE website.<sup>8</sup>

#### **Article 15**

Civil servants are restricted in obtaining additional employment outside the civil service and are required to obtain permission from the States of Guernsey Policy & Resources Committee before taking up any directorship or roles which may conflict with their duties.

Section 24 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 restrict disclosure of information obtained during the course of the inspectors' statutory functions, under risk of prosecution leading to financial penalties.

Inspectors have adequate contractual provisions prohibiting disclosure during the course of their employment, with internal disciplinary processes in any such event. All States of Guernsey employees are also required to sign a specific confidentiality clause as part of their employment, and personal information (including the identity of complainants) is protected under the Data Protection (Bailiwick of Guernsey) Law, 2001.

#### **Article 16**

Inspections are generally organised on the basis of assessed risk, reported incidents and intelligence received. However, the Health and Safety Inspectorate also undertakes proactive

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<sup>7</sup> Guernsey Statutory Instrument 1987 No. 38

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=73753&p=0> accessed on 26 July 2016.

<sup>8</sup> States of Guernsey Health and Safety Executive, Reporting an injury, disease or dangerous occurrence, [http://www.hse.gg/PDFs/Guides\\_Information/Reporting\\_An\\_Injury.pdf](http://www.hse.gg/PDFs/Guides_Information/Reporting_An_Injury.pdf) accessed on 26 July 2016.

inspections that may focus of a particular type of business or business activities in a particular sector of the economy. With the current financial restraints, HSE has strengthened its prioritisation approach to deal only with serious accidents and complaints.

The HSE has brought this matter to the attention of the States of Guernsey Committee *for* Employment & Social Security, which is responsible for providing adequate resources to comply with the Convention.

## **Article 18**

Offences are defined under Section 25 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987:

- On conviction in the Magistrates' Court, each offence of breach of duties under the 1987 Ordinance or under any of the statutory provisions listed in Article 1, carries a maximum penalty of a fine not exceeding £20,000.
- In the Royal Court, the maximum penalty is 2 years imprisonment, and / or an unlimited fine.

The intentional obstruction of an inspector is also specified as an offence in section 25(g) of the 1987 Ordinance. A person convicted of such an offence is liable to a fine of up to £20,000.

## **Article 19**

The Health and Safety Executive submits an annual report to the Committee *for* Employment & Social Security, and its predecessor, the Commerce and Employment Department. A copy of the latest report is attached.

## **Articles 20-21**

*Direct Request (2013)- The Committee requests the Government to indicate the measures taken or envisaged in order to ensure that annual reports contain more detailed information as requested under Article 21(e)–(g). Alternatively, the Committee would be grateful if the Government would indicate the difficulties encountered in the implementation of the provisions of this Article and the measures taken or envisaged to overcome them.*

*Direct Request (2016)- The Committee once again requests the Government to indicate the measures taken or envisaged to ensure that annual reports contain information that is as detailed as possible on all the items listed in Article 21(a)–(g) of the Convention, including statistics of violations and penalties imposed and of occupational diseases, etc. Alternatively, the Committee requests the Government to indicate the difficulties encountered in this regard and the measures taken to overcome them. In this regard, the Committee draws the Government's attention to the guidance provided in Part IV of the Labour Inspection Recommendation, 1947*

*(No. 81), as to the type of information that should be reflected in the annual inspection report.*

The last published annual report is attached.<sup>9</sup> Specific statistics are also provided on the HSE website.<sup>10</sup>

The annual report published by the Commerce and Employment department dealt with the following (as required under the Convention):

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) statistics of workplaces liable to inspection and the number of workers employed therein;<sup>11</sup>

All workplaces are liable to inspection, the States published statistics on the number of fixed premises (2,303 in 2015) and the persons they employ (31,487 workers), but transient activities (construction) are omitted.

Overall statistics of employment are provided by the States of Guernsey (see Article 2). The Committee are aware of this obligation and have identified mechanisms for sharing data between various services to provide this information in the future.

- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;  
the inspectorate recommends prosecution, which are carried out by the Law Officers of the Crown, an independent prosecutor. Results of cases are publicised in the local press, but are not currently collated for statistical purposes. The Committee are aware of this issue and are committed to providing resources to record the relevant information in the future.
- (f) statistics of industrial accidents;

***Request - Noting that the Government has not provided any reply on the Committee's previous request in this regard, and considering that the annual reports on the work of the labour inspection services still do not contain any statistical information on cases of occupational disease, the Committee once again asks the Government to specify the formal mechanisms put in place to notify the labour inspectorate of industrial accidents and cases of occupational disease in conformity with Article 14.***

- (g) statistics of occupational diseases;

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<sup>9</sup> States of Guernsey, Commerce and Employment Review 2012-2016, <<https://www.gov.gg/article/152686/Commerce--Employment-Publishes-Review-2012-to-2016>> accessed on 26 July 2016.

<sup>10</sup> Health and Safety Executive, Statistics 2005-2015, <[http://www.hse.gg/PDFs/Acc\\_Stats\\_2015.pdf](http://www.hse.gg/PDFs/Acc_Stats_2015.pdf)> accessed 26 July 2016.

<sup>11</sup> States of Guernsey Policy Council (2016), Guernsey Quarterly Labour Market Bulletin Quarter 4 2015, <<https://gov.gg/population>> accessed on 26 July 2016.

due to the particular nature of the economy of Guernsey, in particular the absence of significant industrial activity, there were no occupational diseases falling within the regulations reported for the relevant period. However, the annual Public Health report produced by the States Medical Officer of Health<sup>12</sup> did not identify particular occupational diseases within the official statistics. Consideration will be given by the Committee *for* Employment & Social Security to expand the nature of occupational diseases to be reported, to include aspects relevant to the sectors present in Guernsey, e.g. work-related stress.

## **Articles 22 - 24**

The legal provisions in Guernsey have been extended to all commerce activities, quarries, mines and transport.

## **Article 26**

The broad definition of work and undertakings brings the vast majority of workers and businesses under the scope of the relevant legislation. There have been no relevant decisions in the reporting period.

## **Article 29**

Given the small geographical area of Guernsey (25 square miles) and the size of its population (63,000 inhabitants), it would not be possible to apply the exemption in article 1. Accordingly no such exemptions apply.

## **Part III**

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The application of the 1987 Ordinance is the responsibility of the Committee *for* Employment & Social Security acting through the Health and Safety Executive (HSE). The HSE reports through the Chief Secretary to the Committee to the political Committee.

Day to day application is the responsibility of the HSE and inspectors have particular powers as specified in legislation. The Committee has certain enforcement powers and these have been delegated to the inspectors of the HSE or the Chief Health and Safety Officer.

The core activities of the HSE are –

- inspecting workplaces to ensure compliance with health and safety legislation,
- inspecting reported incidents and dangerous occurrences in the workplace,
- providing relevant information, guidance and support to employers and employees,

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<sup>12</sup> States of Guernsey, Public Health Information, <<https://gov.gg/publichealthinfo>> accessed on 26 July 2016.

- promoting good practice in the workplace,
- issuing licences and permits to control high risk activities, and
- promoting risk assessment and technical knowledge as the basis to setting standards and guiding enforcement activities.

Inspections are carried out by the HSE when incidents are reported in accordance with the 1987 Ordinance, at the request of employers and on its own initiative. In the latter case inspections may be carried out on the basis of assessed risk or may be targeted at particular types of work place or economic sectors in order to maintain awareness of health and safety issues.

The HSE business plan is attached.

#### **Part IV**

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The States of Guernsey are working within legal constraints in relation to data sharing between various government services. Because of this, precise information about premises, businesses and linked numbers of workers are not immediately available as they are not collected directly by the Health and Safety Executive. However, the States believes that with emerging ICT capability (eg electronic census), it is possible to explore ways of extracting statistical data from existing databases (social security contributions, income tax), in the same way as it is provided for the Labour Market Bulletins.<sup>13</sup>

As a small service, the HSE are not yet in a position to generate a new and additional database to record premises of new or existing businesses.

#### **Part V**

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The States of Guernsey make the information, statistics and all reports available to the public, employers and employee representatives and trade unions through its website [www.gov.gg/periodicreports](http://www.gov.gg/periodicreports). The States of Guernsey feel that this is the correct way to disseminate information to a wider audience, in a timely, open, transparent and environmentally-friendly format.

#### **Attached documents**

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HSE business plan

States of Guernsey Quarterly Labour Market Bulletin Q4 2015

HSE statistics 2015

Commerce and Employment Report of Activities to end April 2016

**29 July 2016**

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<sup>13</sup> States of Guernsey Policy Council (2016), Guernsey Quarterly Labour Market Bulletin Quarter 4 2015, <<https://gov.gg/population>> accessed on 26 July 2016.

## **Article 22 of the Constitution of the ILO**

Report for the period from 2 September 2013 to 31 August 2016 made by the States of Guernsey

on the

### **ABOLITION OF FORCED LABOUR CONVENTION, 1957 (No. 105)** (extension registered on 17 March 1959)

#### **Part I**

There have been no changes to the legislative and administrative regulations which apply the provisions of the Convention in Guernsey or to the measures taken by the authorities to ensure the application of the relevant Articles since the report submitted in 2013.

#### **Part II**

Enforced labour may arise as a consequence of a conviction in a court of law and may involve either a Community Service Order or work undertaken during a term of imprisonment. There are Regulations governing compliance and deemed compliance with work requirements as a condition of entitlement to supplementary benefit under the Supplementary benefit (Guernsey) Law, 1971.

Rules governing work and related matters for individuals who are subject to Community Service Orders are set out in the [Criminal Justice \(Community Service Orders\) \(Bailiwick of Guernsey\) Law, 2006](#) and [Criminal Justice \(Community Service Orders\) \(Bailiwick of Guernsey\) Regulations 2007](#).

Rules governing work to be undertaken by prisoners are provided for under the [Prison Administration \(Guernsey\) Law, 1949](#) as amended.

Penal servitude and hard labour were abolished by the [Criminal Justice \(Bailiwick of Guernsey\) Law, 1979](#).

#### **Part III**

There have been no changes since the previous report.

#### **Part IV**

There have been no relevant decisions.

#### **Part V**

There have been no practical difficulties in implementing this convention.

#### **Part VI**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

31 July 2016





## Article 22 of the Constitution of the ILO

Report for the period from 2 September 2011 to 31 August 2016 made by the States of Guernsey

on the

### **FISHERMAN'S ARTICLES OF AGREEMENT CONVENTION, 1959**

**(NO. 114)**

(extension registered on 24 June 1977)

#### **Part I**

The Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013 was brought into force on 1 November 2013. The Ordinance establishes a system of regulation of agencies and employment businesses in Guernsey and Alderney with the purpose of protecting seafarers, including in respect of the provision of information and the keeping of records.

#### **Part II**

##### **Direct Request (CEACR) - adopted 2011, published 101st ILC session (2012)**

*Article 3 of the Convention. Articles of agreement. Further to its previous comment, the Committee notes the Government's reference to Part V of the Merchant Shipping (Bailiwick of Guernsey) Law of 2002, which addresses fishing vessels. It notes, in particular, section 111(1) of the Law which empowers the Board (defined in section 294 to mean the Public Services Department of the State of Guernsey) to make regulations prescribing the procedure to be followed in connection with the making of crew agreements between persons employed in Guernsey fishing vessels and persons employing them. **The Committee requests the Government to indicate whether any such regulations have been issued or otherwise how effect is given to the principal requirements of the Convention, including the written form of the fisher's work agreement (Article 3), the maintenance of a record of employment (Article 5), the particulars to be included in the agreement (Article 6) and the possibility to obtain information on board as to the conditions of employment (Article 8).***

No regulations have yet been made under section 111(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002. At present effect is given to the principal requirements of the Convention mainly by the Conditions of Employment (Guernsey) Law, 1985, particularly:

- Sections 1 and 2 (relating to the mandatory provision by employers of written terms of employment; relevant to Articles 3 and 6 of the Convention)
- Section 3A (relating to the mandatory provision by employers of statements of pay; relevant to Article 3 of the Convention)
- Section 4 (relating to the mandatory provision by employers of written statements of changes to terms of employment; relevant to Articles 3 and 6 of the Convention)

At section 7(a) there is an exemption from these provision in relation to sea-going British ships having a gross registered tonnage of 80 tons or more. At present this exemption applies in respect of one Guernsey fishing vessel. The exemption at section 7(b) is considered no longer to have effect following the repeal, as it applies in Guernsey, of section 373 of the Merchant Shipping Act 1894.

In respect of fishers utilising recruitment and placement agencies, the Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013, which gives effect to Regulation 1.4 of the Maritime Labour Convention 2006, offers further relevant protections as provided for in that Regulation, including in respect of the provision of information (relevant to Article 3.4 and Article 8 of the Convention) at section 17, and the keeping of records (relevant to Article 5 of the Convention) at section 18.

In relation to Article 8 of the Convention, reference is made to the powers of boarding, inspection and to require production of documents at sections 247 to 250 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002.

*Moreover, the Committee notes the Government's indication that at present there are no fishing vessels over 80 feet in length registered in Guernsey and therefore the Convention is not applicable to Guernsey fishers. The Committee recalls, in this regard, that in accordance with Article 1(1), the Convention is applicable to all ships or boats of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt water. It also recalls that Article 1(2) of the Convention allows for exemptions with respect to fishing vessels of a certain type or size if so decided by the competent authority after consultations with the fishing-boat owners' and fishers' organizations concerned. No exemption of fishing boats has been communicated to the Office and accordingly the Convention applies to all fishing vessels registered in Guernsey irrespective of their size. **The Committee requests the Government to keep the Office informed of all practical developments in the fishing sector which might have an impact on the application of this Convention.***

The Committee's request that the Office be kept informed of all practical developments in the fishing sector which might have an impact on the application of this Convention is noted.

### **Part III**

No changes since the last report.

### **Part IV**

There are no relevant decisions.

### **Part V**

There have been no practical difficulties in the implementation of the Convention.

### **Part VI**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

**Article 22 of the Constitution of the ILO**

Report for the period from 2 September 2011 to 31 August 2016 made by the States of Guernsey

on the

**RURAL WORKER'S ORGANISATIONS CONVENTION (NO. 141)**  
(extension registered on 20 February 1979)

**PART I**

The legislation which is relevant to the Convention is as follows:

The Human Rights (Bailiwick of Guernsey) Law, 2000 (Freedom of Association)

The Employment Protection (Guernsey) Law, 1998

**PART II**

Article 2

*Please indicate the categories of rural workers existing in your country and specify the legislative provisions or regulations governing the establishment of organizations by each of these categories.*

In the Guernsey context there are the following categories of rural workers:

- dairy farmers.
- non-dairy livestock farmers.
- growers (cultivating various crops, flowers and ornamental plants under glass).
- market gardeners (cultivating various outdoor crops).
- small holders.
- allotment keepers and hobbyists.

Article 2 only applies to tenants, sharecroppers or small owner-occupiers who derive their main income from agriculture, who work the land themselves, with the help of only their family or with the help of occasional outside labour and who do not:

- (a) permanently employ workers; or
- (b) employ a substantial number of seasonal workers; or
- (c) have any land cultivated by sharecroppers or tenants.

In the Guernsey context:

- the majority of dairy farmers employ permanent and part-time labour.
- non-dairy livestock farmers do not derive the majority of their income from farming.
- the majority of growers employ permanent and seasonal labour.
- there a few market gardeners, most of whom employ labour or derive income from other activities.

- smallholders are private individuals who grow crops or keep small numbers of livestock as a hobby or to supplement another, principal form of income.
- allotment keepers and hobbyists generally grow crops or keep livestock as source of food for themselves and perhaps immediate family and friends. They do not derive their main income from these activities.

Article 2 therefore applies to a minority of dairy farmers and growers. Too few to have established any form of rural workers organisation. Notwithstanding that, the Human Rights (Bailiwick of Guernsey) Law, 2000 gives effect to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the right to freedom of assembly and association.

There is nothing to prevent individual workers from joining an established UK-based trades union.

*Please indicate what types of organizations exist for the various categories of rural workers mentioned in answer to the preceding question, including organizations which, although not restricted to rural workers, represent them.*

As indicated above, there are no rural workers organisations to which the context of the Convention applies. However there are established in Guernsey:

- the Guernsey Farmers Association. This is an organisation of dairy farmers that is intended to act as a focus for interaction with relevant government departments, mainly on matters of policy and legislation, and
- Guernsey Smallholders. This is primarily a social organisation that enables members to network and exchange practical information.

### Article 3

*Paragraph 1 – Please state what substantive or formal conditions, if any, must be fulfilled by organizations of rural workers (whether wage earners or self-employed) when they are being established.*

There are no substantive or formal conditions in force that must be fulfilled by workers' and employers' organisations when they are established and there are no special legal provisions regarding the establishment of organisations of any category of workers.

The employment of employees is protected to the following extent:

- (1) The dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –
  - (a) was, or proposed to become, a member of an independent trade union,
  - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or

- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

*Paragraph 2 – Please state the provisions, if any, which govern the functioning, suspension and dissolution of these organizations and the objects which they may legally pursue. Please indicate also the provisions which govern the right of these organizations to group themselves in federations or confederations.*

*Please specify whether guarantees exist for these organizations against acts of interference or coercion and for their members in respect of their affiliation to or activities within these organizations.*

As indicated above, the Human Rights (Bailiwick of Guernsey) Law, 2000 gives effect to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the right to freedom of assembly and association.

There are no provisions that are specific to the functioning, suspension and dissolution of these organisations. Such organisations would have to comply with any provisions that relate generally to the incorporation of, for example, a company or limited partnership.

*Paragraph 3 – Please indicate any conditions to which the acquisition of legal personality is subject and state, in particular, whether the acquisition of legal personality is optional or compulsory for rural workers' organizations.*

The acquisition of legal personality is optional. Within the context of the methods by which legal personality can be obtained in Guernsey, there are no conditions or restrictions that are specific to rural workers organisations.

*Paragraphs 4 and 5 – Please supply information on measures of a general nature which may apply to rural workers' organizations, as, for example, general legislation concerning associations, meetings and the press, laws on national security or a state of siege, penal legislation, etc.*

If an organisation opted to acquire legal personality in accordance with the methods available in Guernsey, it would be bound by any relevant requirements as to the manner in which it organised and conducted its business.

As indicated above, the employment of employees is protected in relation to trades union membership.

#### Article 4

*Please provide information on the principal organizations of rural workers (whether wage earners or self-employed) established in your country, including indications of the approximate number of their members.*

There are none.

*Please describe the various activities undertaken by these organizations to enable such workers to participate in economic and social development and in the benefits resulting therefrom.*

Not applicable.

*Please state whether there are any distinctions, exclusions or preferences in relation to the role accorded to existing rural workers' organizations in economic and social development.*

Not applicable.

#### Article 5

*Please indicate the forms in which a policy to encourage rural workers' organizations has been adopted and the occasions on which this policy was established.*

As indicated above, the Human Rights (Bailiwick of Guernsey) Law, 2000 gives effect to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the right to freedom of assembly and association and the employment of employees is protected.

There is no policy to actively encourage rural worker's organisations nor any policy to discourage them.

*Please state the measures adopted to carry out this policy and the results obtained.*

Not applicable.

*Please supply information on the obstacles, of any kind, encountered by these organizations in their establishment and growth, and in the pursuit of their lawful activities, and on the measures taken or contemplated to eliminate such difficulties.*

#### Article 6

*Please indicate the methods used or contemplated to promote understanding of the need to further the development of rural workers' organizations and of the contribution they can make in the various areas mentioned in this Article, and the results obtained.*

None.

### **PART III**

The government does not encourage or discourage the establishment of workers organisations in any sector of the economy.

### **PART IV**

No applicable decisions.

### **PART V**

Not applicable.

## **PART VI**

In 2015 the number of employed persons in Guernsey was 31,353. Of this total it is estimated that 45 people were primarily employed in farming (mainly in the dairy farming sector) and 163 were employed in growing.

On these totals:

- there were 15 farmers whose primary business was in agriculture and the remainder were employees, and
- there were 29 growers whose primary business was in agriculture and the remainder were employees or individuals who also derived income from other sources.

## **PART VII**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

**July 2016**

## **Article 22 of the Constitution of the ILO**

Report for the period from 2 September 2013 to 31 August 2016 made by the States of Guernsey

on the

### **WORST FORMS OF CHILD LABOUR CONVENTION, 1999 (No. 182)** (extension registered on 15 October 2001)

#### **Part I**

#### **Part II**

**Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. The Committee therefore urges the Government to take the necessary measures to ensure that the sale and trafficking of children under 18 years of age for the purposes of labour and sexual exploitation are prohibited.*

In addition to section 74 of the Children (Guernsey and Alderney) Law, 2008, law enforcement may exercise their powers under section 64 if they have reasonable cause to believe that a child under 18 years of age is suffering, or is imminently likely to suffer serious harm. The Committee for Health & Social Care is also able to obtain an Emergency Child Protection Order under section 55 of the Children Law of 2008 if there are any concerns that a child is at imminent risk on arriving or departing Guernsey.

In 2011, the States of Deliberation (Billet d'État XIII) resolved to modernise and reform the law regarding sexual offences generally in the Bailiwick of Guernsey. The new law will introduce offences similar to those prohibitions on trafficking persons as set out in Part 1 sections 57 to 59 of the UK Sexual Offences Act 2003. Work on the new law is at an advanced stage and consultation on the legislation is planned to commence in 2017.

*Clause (b). The Committee therefore urges the Government to take the necessary measures to ensure that the use, procuring or offering of boys under the age of 18 years and girls between 16 to 18 years of age for prostitution is effectively prohibited.*

The new law on sexual offences will also consolidate and modernise legislation, introducing a variety of offences to protect children from being abused through prostitution and will contain similar measures with regards to prostitution to those set out in the UK Sexual Offences Act. Work on the new law is at an advanced stage and consultation on the legislation is planned to commence in 2017.

#### **Part III**

There have been no relevant decisions.



**Part IV**

There have been no practical difficulties in implementing this convention.

**Part V**

There are no relevant statistics.

**Part VI**

Copies of this report have been made available on the States of Guernsey ([www.gov.gg/periodicreports](http://www.gov.gg/periodicreports)) website for local employer and worker organisations.

**Part VII**

No observations have been received from employers' organisations.

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October 2016