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TO
THE SOVEREIGN BASE AREAS GAZETTE
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LEGISLATION

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EMPLOYMENT (TERMINATION) ORDINANCE 2010

An Ordinance to amend and consolidate the legislation relating to the termination of employment in the Sovereign Base Areas, including provision for compensation for unfair dismissal, minimum notice periods, redundancy payments and the operation of a fund established in the Republic of Cyprus for the payment of redundant employees, and related provisions

J. H. GORDON
ADMINISTRATOR

8th February 2010.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Employment (Termination) Ordinance 2010.

2. Interpretation

In this Ordinance –

“authorised service organisation” means an authorised service organisation as defined in Annex B to the Treaty of Establishment;

“calendar week” means a period of seven days beginning on a Monday and ending the following Sunday;

“contribution” means a contribution due from an employer to the Fund;

“contribution period”, in relation to an employee whose wages are calculated on a monthly basis, means the calendar month, and in relation to other employees the calendar week;

“Crown” means Her Majesty in right of Her Government in the United Kingdom, and in right of Her Administration in the Areas;

“employee” means a person having an employment contract or relationship, or a person who is treated as having such a contract or relationship under the terms of a collective agreement or employment practice;

“Industrial Disputes Tribunal” means the tribunal set up by the Administrator under the provisions of section 16 of the Annual Holidays with Pay Ordinance 1973**(a)**;

“leave on grounds of force majeure” means leave falling within Part 3 of the Parental Leave and Leave on Grounds of Force Majeure Ordinance 2002**(b)**;

“parental leave” means leave falling within Part 2 of the Parental Leave and Leave on Grounds of Force Majeure Ordinance 2002;

“pensionable age” means the pensionable age defined in the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980**(c)**;

“redundancy payment” means a payment out of the Redundancy Fund or any other payment made wholly or in part in accordance with section 23 to an employee whose employment has been terminated as a result of redundancy;

“Redundancy Fund” means the Redundancy Fund established under the provisions of the Republican law;

“Republican Industrial Disputes Tribunal” means the Industrial Tribunal established in the Republic under a law of the Republic.

“Republican Law” means the Termination of Employment Law in the Republic**(d)**, any Law that amends or replaces it and any public instruments made under it;

“trade dispute” means any dispute between employers and employees or between employees and employees which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons whether employees in the employment of the employer with whom the dispute arises or not;

“wages” includes any monetary remuneration from the employment of an employee or any benefit from such employment having a monetary value which can be ascertained, and also includes the contributions payable to the Fund established under the Annual Holidays with Pay Ordinance 1973 excluding special commissions and ex-gratia payments.

Part 2

Unfair Dismissal, and Certificate by Employer

3. Employee’s right to compensation on unfair dismissal

- (1) Subject to subsection (2), where an employer terminates the employment (wholly or principally within the Areas) of an employee for any reason other than those set out in section 5, or in breach of either section 4 of the Employment (Maternity) Ordinance 2009**(e)** or section 17 of the Parental Leave and Leave on Grounds of Force Majeure Ordinance 2002, this constitutes unfair dismissal and the employee has a right to compensation calculated in accordance with Schedule 1.
- (2)
 - (a) Termination of employment only constitutes unfair dismissal or gives rise to a right to compensation where an employee has been continuously employed by the employer (whether within the Areas or elsewhere) for a minimum of 26 weeks.
 - (b) Paragraph (a) does not apply where the termination is in breach of section 4 of the Employment (Maternity) Ordinance 2009.
- (3) An employer and an employee may, by agreement in writing at the time the employee enters into the employment, extend the period of continuous employment required by subsection (2)(a) to a maximum of 104 weeks.
- (4) The compensation to which the employee is entitled under subsection (1) is payable by the employer in so far as it does not exceed the employee’s annual wages and from the Fund to the extent that such compensation exceeds the employee’s annual wages.
- (5) In addition to awarding compensation, the Industrial Disputes Tribunal may order re-engagement of an employee on terms to be specified in an order, where it upholds a complaint for unfair dismissal and where:
 - (a) the employer employs 20 or more persons, and
 - (b) the employee requests such an order, and
 - (c) the Tribunal considers that an order for re-engagement is justified in the circumstances.

- (6) Without prejudice to the generality of subsection (1), the following never constitute valid reasons for the termination of employment:
- (a) trade union membership or participation in trade union activities outside working hours, or, with the consent of the employer, within working hours or membership of a safety committee in accordance with the Health and Safety at Work Ordinance 1999(f);
 - (b) seeking office as, or acting or having acted in the capacity of, workers' representative;
 - (c) the filing in good faith of a complaint or the participation in proceedings against an employer involving alleged breach or breaches of primary or secondary legislation, whether civil or criminal;
 - (d) race, colour, sex, marital status, religion, political opinion, nationality, ethnicity or social origin;
 - (e) pregnancy or maternity;
 - (f) the taking, or the notification of the intention of taking, or any other matter connected with the taking, of parental leave or leave on grounds of force majeure.

4. Loss of right on reaching pensionable age

An employee who has reached pensionable age before the date of termination of employment is not entitled to compensation under this Ordinance.

5. Dismissal not constituting unfair dismissal

- (1) Termination of employment for any of the following reasons does not constitute unfair dismissal:
- (a) failure on the part of the employee to carry out his or her work in a reasonably efficient manner;
 - (b) the employee has become redundant within the meaning of Part 5 of this Ordinance;
 - (c) force majeure or act of war or civil insurrection or Act of God or destruction of the premises by fire not due to the deliberate or negligent act of the employer;
 - (d) subject to subsection (3), the end of a fixed term contract or the attainment by the employee of the normal retirement age recognised by custom, law, collective agreement, contract, conditions of employment or otherwise;
 - (e) subject to subsection (4), conduct by the employee such as to render him or her liable to dismissal without notice.
 - (f) the employee is employed by the Crown and is about to lose his or her status as a dependant of a person specified at section 45(2) (a),(b) or (c).
- (2) Where the employee is temporarily unable to work due to sickness, injury, maternity or disease, subsection (1)(a) does not apply.
- (3) Without prejudice to the generality of section 5 of the Employment (Fixed Terms) Ordinance 2004(g), where the Industrial Disputes Tribunal considers that the duration of any fixed term contract or any series of fixed term contracts should either alone or in conjunction be considered as a contract of indeterminate duration, such contract or series of contracts is not regarded as a fixed term contract.
- (4) For the purposes of subsection (1)(e), where the employer does not exercise the employer's right of dismissal within a reasonable period following the matter which gave rise to this right, the employer is treated as having waived this right.
- (5) Without prejudice to the generality of subsection (1)(e), the following may, taking into account all the circumstances of the case, be grounds for dismissal without notice:
- (a) any conduct on the part of the employee which makes it clear that the employment relationship cannot reasonably be expected to continue;
 - (b) gross misconduct in the carrying out of the employee's duties;
 - (c) commission by the employee in the course of his or her duties of a criminal offence without the agreement, express or implied, of the employer;

- (d) improper or indecent behaviour by the employee in the course of his or her duties;
- (e) serious or repeated contravention or disregard of works rules or other rules concerning the employment.

6. Onus of proof

Where an employer terminates the employment of an employee there is a rebuttable presumption in any proceedings before the Industrial Disputes Tribunal that the termination has not been for one of the reasons set out in section 5(1).

7. Termination by employee owing to conduct of employer

- (1) Where an employee lawfully terminates his or her employment (with or without notice) in circumstances in which the employee is entitled to terminate it without notice by reason of the employer's conduct, this termination is treated as termination by the employer for the purposes of section 3.
- (2) In any proceedings before the Industrial Disputes Tribunal under this section, there is a rebuttable presumption that the employee did not terminate his or her employment in circumstances giving rise to a right to terminate his or her employment without notice by reason of the employer's conduct.

8. Certificate by employer

- (1) An employee whose employment has been terminated for any reason is entitled to receive, on request at the time of the termination, a certificate from the employer specifying the dates of employment and the type or types of work on which he or she was employed.
- (2) An employer must not insert anything unfavourable to the employee in this certificate.

Part 3

Notice

9. Notice to be given by employer

- (1) Except in the circumstances described at section 15, an employer who terminates the employment must give the employee notice in writing of the termination.
- (2) The minimum notice that the employer must give is:
 - (a) 2 weeks, when the employee has been continuously employed for 26 weeks or more but less than 52 weeks;
 - (b) 3 weeks, when the employee has been continuously employed for 52 weeks or more but less than 104 weeks;
 - (c) 4 weeks, when the employee has been continuously employed for 104 weeks or more but less than 156 weeks;
 - (d) 5 weeks, when the employee has been continuously employed for 156 weeks or more but less than 208 weeks;
 - (e) 6 weeks, when the employee has been continuously employed for 208 weeks or more but less than 260 weeks;
 - (f) 7 weeks, when the employee has been continuously employed for 260 weeks or more but less than 312 weeks;
 - (g) 8 weeks, when the employee has been continuously employed for 312 weeks or more.
- (3) Where the employment is on a probationary basis, no notice is required if, during or at the end of the probation period, the employer or the employee decides not to continue the employment.
- (4) No probation period may be longer than 104 weeks and any period of probation longer than 26 weeks does not fall within subsection (3) save by agreement in writing between the employer and the employee at the time of the employee entering into the employment.
- (5) In all disputes before the Industrial Disputes Tribunal under this section there is a rebuttable presumption that the employment was not on a probationary basis.

- (6) Nothing in this section or in section 10 affects the right of the employer or the employee to a longer period of notice if they are so entitled by custom, law, collective agreement, contract or otherwise.
- (7) Any provision in any contract or other agreement for shorter notice than as provided in this section is void.
- (8) When an employee is absent from work owing to incapacity for work, it is not lawful to give him or her notice for a period of 6 months commencing on the first day of the employee's absence.
- (9) Where an employee becomes incapable for work as a result of an industrial accident occurring during the notice period, the notice period is suspended until such time as he or she becomes capable for work.
- (10) The term "industrial accident" means an accident arising out of and in the course of employment of the employee.

10. Period of notice to be given by an employee

- (1) Except in the circumstances described at section 15, an employee who terminates the employment must give the employer notice of the termination.
- (2) The minimum period of notice that the employee must give is:
 - (a) 1 week, when the employee has been continuously employed for 26 weeks or more but less than 52;
 - (b) 2 weeks, when the employee has been continuously employed for 52 weeks or more but less than 260; and
 - (c) 3 weeks, when the employee has been continuously employed for 260 weeks or more.

11. Payment in lieu of notice, and waiver of notice by employee

- (1) An employer who is obliged to give notice of termination of employment to an employee has the right to require the employee to accept payment in lieu of notice, to be calculated in accordance with Schedule 3.
- (2) When an employer exercises the right under subsection (1), the employee is treated as being employed for the purposes of Parts 2 and 5 until the expiry of the period of notice the employee would have received had he or she not received payment in lieu has expired.
- (3) An employee who is given notice by an employer has the right, if he or she receives an offer of new employment from another employer during the period of notice, to leave the employment of the employer without further notice to take up the new employment.
- (4) Where an employee exercises the right under subsection (3), he or she loses his or her entitlement to payment for the remainder of the period of notice.

12. Employee's right to paid time off during notice

An employee who has been given notice by an employer is entitled to time off without loss of pay during normal working hours by agreement with the employer, not exceeding 8 hours per week, or 40 hours in total, for the purposes of seeking new employment.

13. Length and continuity of period of employment

The length of the period of employment and whether or not the employment has been continuous is to be determined in accordance with Schedule 2.

14. Rights of parties during notice

- (1) During the period of notice, Schedule 3 applies and is enforceable by either party.
- (2) Any term in any contract or other agreement purporting to limit the effect of this section is void.

15. Right of both parties to immediate termination

Nothing in this Part affects the right of an employer or an employee to terminate the employment relationship without notice because of the conduct of the other party.

16. Notice in writing where employee is transposed or transferred to another employer

An employer who forms the intention to proceed with any acts or actions which would result in the permanent or temporary transfer to another employer of any employee, must immediately notify such employee in writing of the employer's intentions, even if such transfer would not entail any change of either the duties or the place of work of the employee.

Part 4

Operation of Republican Redundancy Fund in the Areas

17. Legal personality of the Redundancy Fund to be recognised in the Areas

- (1) The Redundancy Fund has legal personality in the Areas and can enter into contracts, sue and be sued and carry on any activity necessary to its functioning.
- (2) In particular and without prejudice to the generality of subsection (1), the Redundancy Fund can make applications to and be heard by the Industrial Disputes Tribunal.

18. The Redundancy Fund's exemption from taxation and stamp duties

The Redundancy Fund is exempt from:

- (a) payment of any dues or duties, under any legislation for the time being in force prescribing such dues or duties, on machinery, including parts and accessories, apparatus, appliances, vehicles, instruments, tools, stores and materials of any kind imported for the use of the Redundancy Fund and not intended for sale to the general public;
- (b) payment of stamp duties under any legislation for the time being in force relating to stamp duties.

19. Employers to register with the Chief Officer

- (1) Subject to subsection (3), every employer to whom section 20 of this Ordinance applies must register with the Chief Officer within one month of becoming an employer.
- (2) When registering under this section an employer must provide the following information:
 - (a) the name of the employer;
 - (b) the address or addresses of the place or places in the Areas where persons are employed by the employer;
 - (c) the number of persons employed at the place or places referred to at paragraph (b); and
 - (d) any further information that the Chief Officer may require.
- (3) An employer who has already registered with the Chief Officer under the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980 or the Annual Holidays with Pay Ordinance 1973 is not required to register under subsection (1).
- (4) The functions assigned to the Chief Officer under this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007(h).

20. Employers to pay contributions

- (1) Subject to subsection (4), every employer in the Areas must pay a contribution to the extent and in the manner provided by this Ordinance.
- (2) Subject to subsection (3), the amount of contribution payable by an employer is 1.20 cents for every euro of the wages payable during each contribution period to each employee, and whenever the sum total of such wages is not a whole sum of euros, such sum is rounded up or down as the case may be to the nearest sum of euros.
- (3) No contribution is payable in respect of any wages exceeding the maximum weekly or monthly (as the case may be) insurable earnings prescribed under the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980.
- (4) Nothing in this section applies to the Crown or to authorised Service organisations.

21. Employers to keep records

- (1) Every employer to whom Section 20 applies must keep a wages book or other register in which the employer must record the following particulars in respect of each employee—
 - (a) the name of the employee;
 - (b) the Social Insurance and Identity Card numbers of the employee;
 - (c) the amount of any payment made to the employee by way of wages and the period to which such payment relates.
- (2) The wages book or other register referred to at subsection (1) must be available for inspection by an Inspector appointed under section 39.
- (3) The functions assigned to an Inspector under subsection (2) are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

22. Method of payment for contributions

- (1) Every contribution which an employer is liable to pay must be paid not later than the end of the calendar month following the month in relation to which the contribution is payable.
- (2) Every contribution which an employer is liable to pay is to be paid by the employer at the insurance office which the Chief Officer may determine.
- (3) When paying contributions the employer must submit a certificate of contributions in a form to be prescribed by the Chief Officer.
- (4) The Chief Officer may modify the procedure set out in subsections (2) and (3) with regard to any particular case or category of cases.
- (5) Any person having an obligation to pay a contribution to the Redundancy Fund under this Ordinance is to be treated as having fulfilled that obligation if such contribution has been paid at a place in the Republic designated for a similar purpose under the Republican Law in a manner provided by that Law.
- (6) The functions assigned to the Chief Officer under this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007(k).

Part 5 Redundancy

23. Right of employee to a redundancy payment

Where an employee is redundant as defined in section 26, the employee's entitlement to a redundancy payment from the Redundancy Fund is the same as it would have been were the employee employed in the Republic, and is calculated in accordance with the Republican Law.

24. Relationship with rights outside this Ordinance

- (1) Where, due to redundancy as defined in section 26, the employee is entitled to an immediate redundancy payment, severance pay, gratuity or any other such lump sum payment relating to the employment, whether this entitlement is by reason of custom, law, collective agreement, contract or otherwise, the employee receives:
 - (a) from the Redundancy Fund, the amount the employee would have received had the employment been in the Republic, and;
 - (b) from the employer, or from any fund or other similar scheme operated on his behalf, the difference between the amount at paragraph (a) and the amount due under the entitlement referred to in the first part of subsection (1).
- (2) In calculating the amount due to the employee under subsection (1), any contribution made by the employee against a similar contribution by the employer as well as any interest must be discounted.

25. Right to certain social insurance benefits and redundancy payment

The right of a person to maternity, sickness, unemployment or disability benefit under the Social Insurance Law of the Republic or any law amending or replacing it does not affect any redundancy payment from the Redundancy Fund.

26. When an employee is redundant

- (1) For the purposes of this Ordinance, an employee is redundant when the employment has been terminated because:
 - (a) the employer has ceased or intends to cease to carry on the business in which the employee was employed;
 - (b) the employer has ceased or intends to cease to carry on business in the place in which the employee was employed;
 - (c) of any of the following other reasons concerned with the operation of the business :
 - (i) modernisation, mechanisation or any other change in methods of production or of organisation which reduces the number of employees necessary;
 - (ii) changes in products or in production methods or in the skills needed on the part of employees;
 - (iii) closing of a department;
 - (iv) marketing or credit difficulties;
 - (v) lack of orders or raw materials;
 - (vi) scarcity of means of production;
 - (vii) contraction of the volume of work or business.
- (2) For the purposes of subsection(1)(b), the Industrial Disputes Tribunal may decide that a change of place of employment does not cause a particular employee to become redundant when, in the opinion of that Tribunal, it is reasonable to expect that employee to continue the employment in the new place of employment.

27. Non-entitlement to redundancy payment

- (1) An employee is not entitled to a redundancy payment —
 - (a) if, before terminating the employment, the employer makes an offer of suitable alternative employment and the employee unreasonably refuses the offer;
 - (b) subject to subsection 2, solely on account of the termination of the contract of employment due to a change of employer where the new employer offers to renew the contract of employment;
 - (c) if the employer is a company registered under the Companies Ordinance 2007(i) and transfers the employee to suitable employment with an associated company; or
 - (d) if, before the termination of employment, another employer, being a company in which the employer is either a principal shareholder or exercises substantial control, offers the employee suitable employment.
- (2) Where the employee can show good reason to the satisfaction of the Industrial Disputes Tribunal for not accepting the offer of renewal of the contract by the new employer in the circumstances described in subsection(1)(b), the Tribunal may award a redundancy payment under this Ordinance.
- (3) For the purposes of subsection (1)(c), two companies are treated as being associated companies if one is subsidiary to the other or if both are subsidiary to a third company. The term “subsidiary company” has the meaning assigned to it by the Companies Law of the Republic.

28. Advance notification of redundancy to Chief Officer

- (1) An employer must notify the Chief Officer of any proposed redundancy at least one month in advance of the date of the anticipated termination of employment.
- (2) Such notification must include:
 - (a) the number of employees likely to become redundant;
 - (b) the branch or branches of the undertaking to be affected ;
 - (c) the occupations and where possible the names and family responsibilities of affected employees; and
 - (d) the reasons for the redundancy.
- (3) The Chief Officer may prescribe a form for the purpose of subsection (2).

- (4) The functions assigned to the Chief Officer by this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

29. Right of redundant employees to re-engagement

Where an employer who has declared employees redundant wishes, within 8 months of the redundancy, to increase the workforce again, the employer must give priority in engagement to the redundant employees, subject to the operational needs of the business.

30. Saving

Nothing in this Part is to be construed as restricting the right of the employer to decide the size of the employer's labour force or to introduce new methods of production.

31. Exemption in respect of employees of the Crown

Nothing in this Part applies to an employee of the Crown or an authorised service organisation.

Part 6

Sanctions

32. Offences

- (1) A person commits an offence and is liable to a fine of €768 or to imprisonment for 6 months or to both, if he or she —
- (a) knowingly or recklessly makes any claim for a payment from the Redundancy Fund where that claim is false in any material particular, or
 - (b) knowingly or recklessly makes any false statement orally or in writing in connection with such a claim, or
 - (c) produces for examination in connection with any such claim any document which to his or her knowledge has been wilfully falsified.
- (2) Any person who knowingly or recklessly aids and abets any person to commit or to try to commit any of the offences specified in subsection (1) commits an offence and is liable to a fine of €768 or to imprisonment for 6 months or to both.

33. Non-disclosure or misrepresentation

- (1) If a person has received any redundancy payment to which he or she was not entitled by reason of the non-disclosure or misrepresentation of a material fact, a Court may order the person to repay such sum to the Redundancy Fund.
- (2) The Court may make an order under subsection (1) whether or not the non-disclosure or misrepresentation constitutes a criminal offence and whether or not such non-disclosure or misrepresentation was fraudulent.
- (3) The Court may make an order under subsection (1) —
- (a) following civil proceedings brought by or on behalf of the Redundancy Fund under this section, or
 - (b) following a conviction of the person for a criminal offence and in addition to any penalty imposed by the Court in consequence of such conviction.

34. Offence by employer in respect of certificate

- (1) An employer who refuses, after being requested in writing by an employee, to provide the certificate prescribed by section 8 commits an offence and is liable to a fine of €427.
- (2) An employer who inserts anything unfavourable to an employee in a certificate given under section 8 commits an offence and is liable to a fine of €427.

35. Offence by employer in respect of giving notice

- (1) An employer who fails, without good reason, to notify the Chief Officer of a proposed redundancy as required by section 28(1) commits an offence and is liable to a fine of €427.

- (2) An employer who fails, without good reason, when notifying the Chief Officer under section 28(1) to give the details prescribed by section 28(2) commits an offence and is liable to a fine of €427.
- (3) An employer who fails to comply with section 16 commits an offence and is liable to a fine of €1,281.
- (4) The functions assigned to the Chief Officer under this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

36. Offence of failing to register, pay contributions or produce required documents

- (1) An employer commits an offence and is liable to a fine of €427 if the employer -
 - (a) fails to register as an employer as required by section 19;
 - (b) fails to pay into the Redundancy Fund in accordance with section 20 any contribution which the employer is liable to pay; or
 - (c) fails, without lawful excuse, to produce documents required to be produced by that person under this Ordinance to the Chief Officer or to an Inspector or to a person to whom the functions of Chief Officer or Inspector have been delegated.
- (2) In addition to any penalty imposed on a person in consequence of a conviction of an offence under subsection (1)(b), the Court must order such person to pay into the Redundancy Fund any contributions he or she is liable to pay.

37. Penalty for making false statements or representations to evade payment of contributions

An employer commits an offence and is liable to a fine of €256 or to imprisonment for 3 months, or to both, if for the purpose of evading payment of contributions whether by that person or by another person, the employer -

- (a) knowingly or recklessly makes any false statement or representation, or
- (b) produces or furnishes or causes to be produced or furnished any document or information which the employer knows to be false in any material particular.

38. Liability of directors, managers, secretaries and other officers of bodies corporate

Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, that person as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

Part 7

Appointment of Inspectors

39. Appointment of Inspectors

- (1) The Chief Officer may appoint any person to act as an Inspector.
- (2) Anything required or authorised under this Ordinance to be done by the Chief Officer may be done by an Inspector appointed under this section.

40. Powers of Inspectors

- (1) An Inspector appointed under section 39 may, for the purposes of this Ordinance, do all or any of the following:
 - (a) enter at all reasonable times any premises or place, other than a private dwelling house, where there are reasonable grounds for supposing that any employees are employed;
 - (b) make such examination and enquiry as may be necessary for ascertaining whether this Ordinance is being or has been complied with in any such premises or place;

- (c) examine either alone or in the presence of any person, with respect to any matters under this Ordinance on which he or she may reasonably require information, every person in any premises or place, or whom the Inspector has reasonable cause to believe to be or to have been an employee, and to require every such person to be so examined;
 - (d) exercise such other powers as may be necessary for carrying this Ordinance into effect.
- (2) The following persons must, on request, give an Inspector all such information and must produce for inspection all such documents that the Inspector may reasonably require:
- (a) the occupier of any premises or place described at subsection (1)(a);
 - (b) any other person who is or has been employing any employee;
 - (c) the servants and agents of any such occupier or other person, and
 - (d) any employee.
- (3) Every Inspector must be given a certificate of his or her appointment and must produce it if so requested when entering any premises or place for the purposes of this Ordinance.
- (4) The functions assigned under this section are generally delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

Part 8

Disputes under this Ordinance

41. Industrial Disputes Tribunal to have jurisdiction

- (1) Subject to subsection (2), the Industrial Disputes Tribunal has exclusive jurisdiction to determine all industrial disputes arising out of the operation of this Ordinance, including any ancillary or incidental matter.
- (2) Where the claim for compensation is in excess of that provided by this Ordinance, a person may commence proceedings in respect of termination of employment in the Resident Judge's Court.
- (3) The Industrial Disputes Tribunal may, at the discretion of the Chairman, re-open any case or reconsider its decision upon any payment made by the Redundancy Fund at any time in relation to any employment (wholly or principally within the Areas) if it appears to the Chairman to be just and equitable to do so.

42. Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960

Part 3 of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960(k), applies to disputes under this Ordinance, and for such purpose :—

- (a) any such disputes are to be treated as civil proceedings and, where appropriate, as an action or an appeal;
- (b) the Industrial Disputes Tribunal is to be treated as a Court of the Areas, and the Republican Industrial Disputes Tribunal is to be treated as a District Court of the Republic; and
- (c) the Redundancy Fund and any corporation, company or any other corporate body established in the Republic under any law of the Republic is to be treated as a Cypriot.

43. Recovery of awards by the Tribunal

- (1) An award by the Industrial Disputes Tribunal under this Ordinance or by the Republican Industrial Disputes Tribunal under the Republican Law is recoverable as a civil debt.
- (2) Where this subsection applies, an award by the Industrial Disputes Tribunal, or by the Republican Industrial Disputes Tribunal under the Republican Law is included amongst the debts which:
 - (a) under section 30 of the Bankruptcy Ordinance(l) are in the distribution of the property of assets of a bankrupt, to be paid in priority to all other debts; and
 - (b) under section 300 of the Companies Law of the Republic are, on the winding up of a company, to be paid in priority to all other debts,

- (3) Subsection (2) applies where an application to the Industrial Disputes Tribunal or the Republican Industrial Disputes Tribunal, as the case may be, has been made, where subsection (2)(a) applies, before the date of the receiving order, and where subsection 2(b) applies, before the date of commencement of the winding up of the company.
- (4) Where, at the time of an award by the Industrial Disputes Tribunal or the Republican Industrial Disputes Tribunal, proceedings under the Bankruptcy Ordinance or under the Companies Law of the Republic have been started in respect of the employer, the employee to whom the award has been made recovers the whole amount of the award from the Redundancy Fund, and his or her rights in respect of any payment under the award then vest in the Redundancy Fund.

Part 9

Miscellaneous and Final Provisions

44. Application to a shareholder in a private company

Any right or duty conferred by this Ordinance on an employee is also conferred on any person who is a shareholder in a private company, as defined in the Companies Law of the Republic, and works in such a company, but not under an employment contract or in circumstances which may imply the existence of a relationship between employer and employee.

45. Application to the Crown

- (1) Except as provided by sections 20(5) and 31, and subject to subsection (2), this Ordinance binds the Crown and authorised service organisations and applies to employees of the Crown and authorised service organisations.
- (2) This Ordinance does not bind the Crown or such authorised service organisations as might be declared by the Chief Officer for the purpose of this section in relation to its employment of:
 - (a) a member of Her Majesty's Forces,
 - (b) a member of a civilian component as defined in paragraph 1(b) of section 1 of Annex C of the Treaty of Establishment, or
 - (c) a person enjoying the rights and facilities of members of Her Majesty's Forces by virtue of paragraph 3 of section 9 of Part 2 of Annex B of the Treaty of Establishment, other than as a dependant.
 - (d) Any other group that the Chief Officer specifies by Order published in the Gazette.

46. Repeal

The Termination of Employment (Consolidation) Ordinance 1980(m) is repealed without prejudice to anything done or left undone under it.

47. Commencement

This Ordinance comes into force on the day of its publication in the Gazette.

48. Transitional provisions

- (1) The substitution of this Ordinance for the provisions repealed by this Ordinance does not affect the continuity of the law.
- (2) Anything done, or having effect as done, (including the making of subordinate legislation) under or for the purposes of any provision repealed by this Ordinance has effect as if done under or for the purposes of any corresponding provision of this Ordinance.

SCHEDULES/.....

Schedule 1

(Section 3)

Method of awarding compensation by the Industrial Disputes Tribunal upon a finding of unfair dismissal

1. Any compensation awarded by the Industrial Disputes Tribunal to an employee under section 3 is to be assessed as prescribed in this Schedule.
2. The compensation must in no case be less than that which the employee would have received had the employee been declared redundant by the employer and been entitled to a redundancy payment under Part 5 of this Ordinance.
3. The compensation must not exceed 2 years' salary.
4. Subject to paragraphs 2 and 3 of this Schedule, the Industrial Disputes Tribunal has complete discretion in their award. However, in assessing the award, it must give consideration, amongst other things, to the following:
 - (a) the wages and any other emolument of the employee;
 - (b) the length of service of the employee;
 - (c) the loss of career prospects of the employee;
 - (d) the actual circumstances of the dismissal;
 - (e) the age of the employee.

Schedule 2

(Section 13)

Part 1

Computation of period of employment

1. (1) The period of employment is to be computed in weeks.
(2) The following weeks count in computing a period of employment:
 - (a) a week in which the employee works 18 hours or more;
 - (b) a week in which the employee is –
 - (i) unable to work because of sickness, injury or disease;
 - (ii) absent from work because of a temporary cessation of work;
 - (iii) absent from work in circumstances such that by arrangement or custom or law the employment relationship is considered by the Industrial Disputes Tribunal to continue;
 - (iv) absent from work on maternity leave or parental leave.
2. Where the employee is absent from work in any week because of a trade dispute, that week does not count in computing the period of employment.
3. (1) Subject to sub-paragraph (2), paragraphs 1 and 2 of this Schedule apply only to employment with the same employer.
(2) When the employer's business or any part of it is transferred to another employer as a going concern, or when the employee is transferred from one company to another, all weeks of employment with the former employer are to be counted in computing the period of employment with the new employer.
4. (1) Where an employee was employed for a period not less than 26 weeks between 2 October 1972 and 14 July 1974, the period between 15 July 1974 and 3 October 1976 counts as a period of employment with the employer by whom he or she was employed on 18 April 1977 or, if he or she was not employed on that day, with the first employer by whom he or she was employed after that date.

(2) The period referred to at sub-paragraph (1) is increased in proportion to the number of weeks of the uninterrupted employment of an employee in the service of an employer by whom he or she was employed on 14 July 1974.

(3) Where the period of employment of an employee between 1 October 1973 and 14 July 1974 cannot be proved, the period which is to be reckoned as a period of employment is to commence on 1 October 1973 and not on 15 July 1974.

5. No period counts as a period of employment under paragraph 4 if such period has been calculated for the purpose of compensation or payment under the provisions of this Ordinance with regard to a previous termination or employment of any employee.

Part 2

Continuity of employment

6. Continuity of employment is not broken by any of the following:

- (a) absence from work due to a trade dispute;
- (b) a change in the employer as referred to in paragraph 3(2) of this Schedule;
- (c) absence from work because of sickness, injury, maternity or disease;
- (d) absence from work because of temporary cessation of work;
- (e) absence from work in circumstances such that by arrangement or custom or law (whether of the Areas or the Republic) the employment relationship is considered by the Industrial Disputes Tribunal to continue;
- (f) absence from work on holiday, paid or unpaid;
- (g) absence from work on account of employment overseas in a business which belongs wholly or mainly to the employer;
- (h) absence from work due to force majeure or act of war or civil insurrection or Act of God;
- (i) absence from work on parental leave or leave on grounds of force majeure.

Schedule 3

(Sections 11 and 14)

Entitlement of the employee during the period of notice

1. Where the employee works for a fixed wage, the employee is entitled to that fixed wage during the period of notice save as otherwise provided under this Schedule.

2. Where the employee's pay is based on the number of hours worked and does not vary with the amount of work done, the employee is entitled to be paid for the number of hours worked during the period of notice.

3. (1) An employee's entitlement to a fixed wage under paragraph 1 is not affected where the employee is:

- (a) ready and willing to work but no work is provided for him by the employer;
or
- (b) incapable of work because of sickness, maternity, injury or disease; or
- (c) absent on holiday; or
- (d) absent on parental leave.

(2) Where an employee is entitled to be paid for the number of hours worked as described in paragraph 2, and where any of the sets of circumstances described at 3(1)(a) to (d) apply, the employee is entitled to be paid, for each week of the notice, no less than the average weekly wage in the 12 full weeks before notice was given.

(3) For the purpose of calculating the average weekly wage under sub-paragraph (2), no week counts as a full week unless the employee worked at least 18 hours that week.

(4) Any payments made to the employee by the employer by way of sick pay count towards meeting the employer's liability under this paragraph.

4. (1) Where the employee is paid by the hour, the pay during the notice period is not to be less than payment for the number of hours worked during the notice period at the average rate of pay per hour in the 4 full weeks prior to notice being given.

(2) For the purpose of sub-paragraph (1), no week counts as a full week unless the employee worked at least 18 hours in that week.

5. Where the employee has no fixed wage and where he is not paid by the hour, the employee is entitled to payment during the notice period as follows:-

- (a) for each week of the notice period the employer must pay the employee not less than his average weekly wages in the last 12 full weeks before notice was given. No week counts as a full week for this purpose unless the employee worked at least 18 hours in that week.
- (b) The employer's liability under sub-paragraph (a) is conditional upon the employee being ready and willing to do work of a reasonable nature to earn remuneration at the rate stipulated in sub-paragraph (a).
- (c) The employer is liable to pay the employee as stipulated in this paragraph if the employee:
 - (i) is absent from work because of sickness, maternity, injury or disease; or
 - (ii) is absent on holiday; or
 - (iii) is absent on parental leave.
- (d) any sick pay paid by the employer counts towards the employer's liability under this paragraph;
- (e) where the notice was given by the employee, the employer's liability under this paragraph does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

6. No payment is due under this Schedule for any period during which the employee is absent from work because of a trade dispute.

7. If, during the period of notice, the employer lawfully dismisses the employee for any of the reasons specified in section 5(5) no payment is due under this Schedule for the remaining period of the notice.

Notes

- (a) Ordinance 10/73.
- (b) Ordinance 39/02.
- (c) Ordinance 16/80.
- (d) Law 24/1967, Republic of Cyprus, Gazette No. 577 of 22 May 1967.
- (e) Ordinance 20/09.
- (f) Ordinance 6/99.
- (g) Ordinance 39/04.
- (h) Ordinance 17/07.
- (i) Ordinance 2/07.
- (j) Cap. 113, Republic of Cyprus. This Law has been adopted by the Companies Ordinance 2/07.
- (k) Ordinance 6/60.
- (l) Cap. 5 (Laws of Cyprus).
- (m) Ordinance 5/80.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This Note relates to the Employment (Termination) Ordinance 2010. It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. The Ordinance consolidates the Termination of Employment Consolidation Ordinance 1980 with later amendments made to that Ordinance, so bringing all relevant primary legislation together in a single Ordinance. There is also an amendment (at section 5) to replicate the effect of an amendment to the Republican employment termination law. Other amendments replicate the effect of amendments to the Republic's protection of maternity legislation and parental leave legislation, but which principally concern the right to compensation for unfair dismissal. There are also changes regarding the application of the Ordinance to the dependants of Crown employed UK-based civilians and service personnel. Unlike the previous version of this legislation, this Ordinance includes such dependants within its scope, which means that they can claim redundancy payment when made redundant by a non-Crown employer and bring claims for unfair dismissal against any employer including the Crown. However, there is an exception, in that dismissal by the Crown for the reason that the dependant is about to lose their dependency status will not give rise to a claim for unfair dismissal. Finally, unlike in the previous legislation, the functions of inspectors are delegated to the Republic.

4. The Ordinance also reflects modern legislative drafting practice in the Areas. For example, all the delegated functions appear on the face of the Ordinance, rather than on a separate piece of delegation legislation, as was previously the case. It also omits the set of detailed provisions contained in the previous legislation for the calculation of redundancy payments. As the body that calculates and makes any such payments is the Republican Redundancy Fund, any such provision would have no effect or purpose. Instead, section 23 provides that the redundancy payments are the same as they would be had the employee been employed in the Republic.

5. So far as substantive provision is concerned, the Ordinance makes provision similar to that made in the equivalent Republican law, so that employees in the Areas have broadly the same rights and duties as they would have were they employed in the Republic of Cyprus. With two exceptions, the Ordinance applies to all employers in the Areas. The first exception is that provisions regarding redundancy payments do not apply to the Crown or to authorised service organisations. Secondly, the Ordinance does not apply where the employer is the Crown or an authorised service organisation and the employee is a UK based civilian or service person. Neither would it apply in the case of an employee who belongs to a group that the Chief Officer specifies for that purpose in an Order.

6. Part 1: This part defines terms used in the Ordinance.

7. Part 2: This part provides a right to claim compensation for unfair dismissal, which is when an employer terminates the employment of an employee for any reason other than those listed in section 5, or for termination in breach of either the Parental Leave Ordinance or section 4 of the Employment (Maternity) Ordinance 2009 (which provides, with certain exceptions, that an employer may not give an employee notice of termination of employment after being notified of her pregnancy or intention to adopt a child). To qualify for compensation for unfair dismissal, an employee must be below pensionable age (defined in social insurance legislation). The employee must also have been continuously employed by the employer for at least 26 weeks, unless there is a written agreement extending that period to 104 weeks. Compensation, which is to be calculated according to Schedule 1, must be no less than the employee would have received had the dismissal been for redundancy, and no more than two years' wages. As well as being able to award financial compensation, the Industrial Disputes Tribunal can in some circumstances order an employer of 20 or more employees to re-engage the employee. Section 7 provides that where the employer's conduct is such that the employee is entitled to terminate the employment without giving notice, the termination is to be treated as if it is termination by the employer. Section 8 obliges an employer

to provide the employee with a certificate specifying the dates and type of employment. This part applies to all employers in the Areas, including the Crown and authorised service organisations.

8. Part 3: This part obliges the party that is terminating the employment, whether an employer or an employee, to give the other party notice of the termination, and it prescribes minimum notice periods. Notice must be given whether or not the reason for the dismissal is redundancy. Notice does not have to be given, however, where a party has a right to terminate the employment without notice as a result of the other party's conduct. Section 9(8) makes it unlawful for an employer to give notice to an employee who is absent owing to incapacity for work, until six months have expired since the first day of the absence. Section 9(9) applies when an employee who has been given notice becomes incapable for work owing to an industrial accident taking place in the notice period. In these circumstances, the notice period is suspended until he or she becomes capable for work. Section 16 allows an employer to require the employee to accept payment in lieu of notice. Section 12 gives an employee the right to a certain amount of paid time off during the notice period to seek other employment. Section 16 obliges an employer to give the employee immediate notice of any intention to proceed with an act that would result in transfer to another employer. This part binds all employers in the Areas, including the Crown and authorised service organisations.

9. Part 4: This part makes it possible for the Republican Redundancy Fund (the Redundancy Fund) to operate in the Areas for the purpose of making redundancy payments to employees, except those employed by the Crown. It also obliges employers, other than the Crown, to register with the Chief Officer and to make contributions to the Redundancy Fund. Section 21 obliges these employers to keep and make available for inspection certain records in relation to each employee. Section 22 makes provision for how and when contributions must be paid to the Redundancy Fund.

10. Part 5: This makes provision for redundant employees, save those employed by the Crown, to receive redundancy payments from the Redundancy Fund, calculated in the same way as if the employees were employed in the Republic. Section 24 deals with the situation where the employee, quite apart from his or her entitlement under this Ordinance, is entitled to payment on redundancy by virtue of some other arrangement, such as the employment contract. In such cases, the employee does not receive both entitlements; he or she receives the greater of the two.

11. Section 27 sets out circumstances where no entitlement to a redundancy payment arises, including a refusal of an offer of suitable alternative employment. Section 28 obliges employers to notify the Chief Officer of any proposed redundancy, and then delegates this function to Republican officers. Section 29 obliges employers to give priority to the redundant employees should they increase their workforces within eight months of the redundancy.

12. Part 6: This provides for criminal offences and penalties. It includes a provision that the senior officers of a body corporate can be prosecuted if they consented or connived in an offence committed by that body, or if an offence by that body was attributable to their neglect.

13. Part 7: This provides for the appointment of inspectors, and confers powers and duties, which are delegated to officers in the Republic as general delegated functions the under Delegation of Functions to the Republic Ordinance 2007.

14. Part 8: This gives the Areas' Industrial Disputes Tribunal jurisdiction to hear disputes under the Ordinance. It provides for awards by both this Tribunal and the Republican Industrial Disputes Tribunal to be recoverable as civil debts, and makes provision for how they should be enforced in the event of the employer's insolvency. This part also makes provision for application to the Crown, the coming into force of the Ordinance, and repeal of the Ordinance that this Ordinance replaces.

