



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1212 of 10th July 2001
LEGISLATION

ORDINANCE 7 OF 2001

AN ORDINANCE
TO PROVIDE FOR THE EMPLOYER'S OBLIGATION
TO INFORM EMPLOYEES OF THE PARTICULARS
OF THEIR CONTRACT OF EMPLOYMENT

D.E. RADCLIFFE
ACTING ADMINISTRATOR

5th July 2001.

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

1. This Ordinance may be cited as the Employment Rights (Particulars of Employment) Ordinance 2001.

Short title.

2. In this Ordinance, unless the context otherwise requires -

Interpretation.

“collective agreements” means an agreement or arrangement between an employer or association of employers and representatives of employees relating to terms and conditions of employment;

“contract of employment” means a contract of service or apprenticeship, whether expressed or implied and (if it is expressed) whether orally or in writing;

“employee” means an individual who has entered into or works under a contract of employment.

3. - (1) Subject to subsection (2) below, this Ordinance shall apply to every employee having a contract of employment.

Scope of application.

(2) This Ordinance shall not apply to employees -

(a) whose total period of employment under the contract of employment does not exceed one month;

(b) whose total hours of employment in a week under the contract of employment does not exceed eight; or

(c) whose employment is of a casual nature or is for a specific purpose, unless having regard to the specific circumstances of any particular case the non-application of the Ordinance cannot be justified.

Obligation to give information.

4. - (1) Every employer shall give to each of his employees to whom this Ordinance applies a statement of the employee's particulars of employment.

(2) A statement of an employee's particulars of employment shall contain particulars of:

- (a) the names of the employer and employee respectively;
- (b) the place of work and the address of the employer;
- (c) the title of the job which the employee is employed to do, his grade (if any) and a brief description of the work for which he is employed;
- (d) the date of commencement of the contract of employment and the expected duration thereof if it is made for a specific period;
- (e) the amount of paid leave to which the employee is entitled, and the time and manner for allocating such leave;
- (f) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
- (g) the scale or rate or the method of calculating remuneration and the intervals at which remuneration is paid;
- (h) any terms and conditions relating to hours of work including those relating to normal working hours;
- (i) any collective agreements governing or affecting the employee's terms and conditions of work.

(3) No term of the contract of employment shall be less favourable to an employee than is provided by any Ordinance, regulations or Orders made thereunder.

Manner of giving information.

5. A statement of an employee's particulars of employment shall be given -

- (a) in or as part of the written contract of employment;
- (b) in a letter of engagement; or
- (c) in any other document, signed by the employer:

Provided that the particulars referred to in paragraphs (e), (f), (g) and (h) of section 4(2), may be given by a reference to Ordinances, regulations, Orders or collective agreements relevant to the matters referred to in the said paragraphs.

Time for giving information.

6. - (1) Subject to the provisions of section 8, the particulars referred to in section 4(2) shall be given not later than one month after the date of the commencement of employment.

(2) If the contract of employment of a person to whom this Ordinance applies for any reason subsists for less than one month, any document referred to in section 5 above shall be given to the employee on the termination of the contract of employment.

(3) Subject to subsection (4) below, if, after giving the particulars which are required to be given under section 4 there has been a change in those particulars the employer shall give to the employee a written statement containing particulars of the change.

(4) Subsection (3) above shall not apply where particulars have been given by reference to Ordinances, regulations, Orders or collective agreements under the proviso to section 5 if the change is as a result of changes to such Ordinances, regulations, orders or collective agreements.

(5) The validity of a contract of employment shall not be affected by any failure of the employer to comply with the requirements of this Ordinance with respect to the giving of particulars or of any change thereto.

7. - (1) Where an employee is required to work in any country other than in the Areas or in the Republic and the duration of that work is not less than one month, the particulars referred to in section 4 shall be given to the employee before his departure from the Areas or the Republic, as the case may be, and shall include at least the following additional particulars:

Expatriate employees.

- (a) the duration of the employment abroad;
- (b) the currency in which his remuneration is to be paid;
- (c) the benefits (if any) in money or in kind attendant on the expatriation; and
- (d) the conditions (if any) governing the employee's repatriation.

(2) The information regarding the particulars in paragraphs (b) and (c) of subsection (1) above, may be given by reference to Ordinances, regulations, Orders or collective agreements relevant to such matters.

8. In relation to a contract of employment which is in existence immediately before the date of commencement of this Ordinance ("the commencement date") and which continues in existence on, or on and after, the commencement date, the employer shall give to the employee concerned the particulars that the employer is required to give to an employee under section 4 -

Employment relationships existing at date of commencement of Ordinance.

- (a) by no later than six months after the commencement date; or
- (b) if the contract of employment was in existence for five years or longer on the commencement date, and the employee concerned requests those particulars before the expiration of the six months mentioned in paragraph (a) above, by no later than two months after such request.

9. - (1) The competent court for the resolution of any civil dispute arising under the provisions of this Ordinance shall be the Industrial Disputes Tribunal established under section 16(4) of the Annual Holidays with Pay Ordinance.

Competent Court:

Ordinances 10/73, 12/79 and 21/80.

(2) There shall be no recourse to the said Tribunal, unless notification of the dispute is given by the employee to the employer and the employer has not responded within fifteen days of the date of such notification:

Provided that the notification procedure referred to above shall not be required -

- (a) in the cases referred to in section 7;
- (b) where the employment is of a temporary nature; or
- (c) where the employee is not covered by a collective agreement.

Onus of proof.

10. The onus of proof that the employer has given to the employee the particulars required to be given under this Ordinance shall be upon the employer.

Appointment of Inspectors or other officers.

11. The Chief Officer may, if he considers it necessary, appoint Inspectors or other officers to carry out prescribed duties and functions for the purposes of this Ordinance.

Penalties.

12. - (1) Without prejudice to an employee's rights under section 9, an employer who, without reasonable excuse, contravenes the provisions of this Ordinance, shall be guilty of an offence and, on conviction, shall be liable to a fine not exceeding five thousand pounds (£5,000).

(2) The onus of proof that there was a reasonable excuse for the omission to give any particulars required to be given under this Ordinance shall be upon the employer.

Regulations.

13. - (1) The Administrator may make regulations generally for the effective application of this Ordinance, for matters that by this Ordinance may be prescribed, and for putting this Ordinance into effect.

(2) Any such regulations may make different provision for different cases or classes of case and may contain such incidental, supplementary or transitional provisions as appears to the Administrator to be necessary or expedient for the purposes of this Ordinance or the regulations.

Crown employment.

14. - (1) Subject to subsection (4) below the provisions of this Ordinance shall have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees.

(2) In this Ordinance "Crown employment" means employment under or for the purposes of the Administration or Her Majesty's Government in the United Kingdom or any officer or body exercising on behalf of the Crown functions conferred by a provision of an Ordinance.

(3) For the purposes of the application of this Ordinance in relation to Crown employment in accordance with subsection (1) above -

- (a) references to an employee shall be construed as references to a person in Crown employment, and
- (b) references to a contract of employment shall be construed as references to the terms of employment of a person in Crown employment.

(4) The provisions of this Ordinance shall not apply to service as a member of the naval, military or air forces of the Crown.

5th July 2001
(107/4/3)

G. BARLOW,
Acting Chief Officer.

ORDINANCE 8 OF 2001

**AN ORDINANCE
TO PROVIDE FOR THE SAFEGUARDING AND
PROTECTION OF EMPLOYEES' RIGHTS ON THE
TRANSFER OF UNDERTAKINGS,
BUSINESSES OR PARTS THEREOF**

D.E. RADCLIFFE
ACTING ADMINISTRATOR

5th July 2001.

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

1. This Ordinance may be cited as the Employment Rights (Transfer of Undertakings) Ordinance 2001.

Short title.

2. For the purposes of this Ordinance, unless the context otherwise requires -

Interpretation.

“collective agreement” means an agreement or arrangement between an employer or association of employers and representatives of the employees relating to terms and conditions of employment of employees;

“contract of employment” means an agreement between an employee and his employer determining the conditions of the employee’s employment;

“employee” means an individual who works for another person under a contract of employment, or apprenticeship but does not include any one who provides services under a contract for services and references to a person’s employer shall be construed accordingly;

“representatives of the employees” means the representatives of the employees established by law or practice;

“transfer” means a transfer of an undertaking to which this Ordinance applies;

“transferee” means the person to whom an undertaking to which this Ordinance applies has been transferred;

“transferor” means the person who transfers to a transferee an undertaking to which this Ordinance applies;

“undertaking” includes any trade or business or any part thereof.

Scope of
Ordinance.

3. - (1) This Ordinance shall apply to the transfer from one person to another of an undertaking situated immediately before the transfer in the Areas by sale or by some other disposition or by operation of law.

(2) Subject to the other provisions of this section there is a transfer of an undertaking within the meaning of this Ordinance, where there is a transfer of an economic venture or activity which retains its identity as an identifiable grouping of resources pursuing an economic venture or activity, whether or not that venture or activity is the main, or an ancillary, activity of the transferor or transferee.

(3) This Ordinance shall apply to the transfer of an undertaking carried on by persons or a body of persons, corporate or unincorporate including a legally established public authority whether or not the undertaking is carried on for gain :

Provided that an administrative reorganisation of a public authority or the transfer of administrative functions within a public authority shall not be deemed to be a transfer for the purposes of this Ordinance.

(4) This Ordinance shall not apply to the transfer of ownership of sea-going vessels, without more.

Safeguard and
security of
employees' rights.

4. - (1) The transferor's rights and obligations arising from a contract of employment of an employee existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee as if that contract of employment had originally been made with the transferee:

Provided that the transferor and transferee may agree that after the date of transfer, the transferor shall continue to be jointly and severally liable with the transferee in respect of obligations created before the transfer and which arose from a contract of employment in force at the time of the transfer.

(2) Following the transfer, the transferee shall continue to observe the terms and conditions of any collective agreement on the same terms applicable to the transferor under that agreement until a date no earlier than one year after the date of the transfer or until the date of termination or expiry of the collective agreement whichever is the later or until the agreement has been replaced by another collective agreement.

(3) Subsections (1) and (2) above shall not apply to so much of a contract of employment as relates to an employee's rights to pension (including the rights of the survivors of the employee), and invalidity benefits under a supplementary scheme provided by the transferor, not being such rights and benefits as arise from State or Government funded schemes.

(4) Employees who at the time of the transfer are no longer employed by the transferor, shall retain their entitlements to such rights and benefits under such a supplementary scheme as is referred to in subsection (3) above.

5. - (1) The transfer of an undertaking shall not of itself constitute grounds for the dismissal of an employee by the transferor or the transferee:

Provided that this provision shall not prejudice the right of dismissals which are made for economic, technical or organisational reasons which require changes in the level of employment.

(2) If a contract of employment is terminated because the transfer involves a substantial change in working conditions to the detriment of the employee under the contract, the employer shall be deemed to have been responsible for the termination of the contract of employment.

6. Sections 4 and 5 shall not apply to a transfer when the transferor is the subject of bankruptcy, liquidation or other similar insolvency proceeding lawfully instituted for the purpose of liquidating the assets of the transferor under the supervision of a competent legal authority.

7. - (1) If, on transfer –

- (a) an undertaking retains its identity so as to enable the employees affected by the transfer to continue to be effectively represented by the representatives of employees who represented them before the transfer, those representatives shall continue so to represent the employees after the transfer unless otherwise required by agreement, law or practice;
- (b) the representatives of the employees are, in the circumstances of the case, unable so effectively to represent the employees affected by the transfer, it shall be the responsibility of the transferor and transferee to ensure that the employees are represented pending the reconstitution or new appointment of representatives of employees.

(2) If the terms of office of the representatives of the employees affected by the transfer expire as a result of the transfer, the representatives shall continue to enjoy the protection provided by Ordinances, regulations, collective agreements or practice.

8. - (1) The –

- (a) transferor and transferee shall inform the representatives of their employees affected by a transfer, of the following:
 - (i) the date or the proposed date of the transfer;
 - (ii) the reasons for the transfer;
 - (iii) the legal, economic and social implications of the transfer as respects the employees; and
 - (iv) the measures envisaged to be taken in relation to the employees,

and where in an undertaking there are no representatives of employees for reasons beyond their control the above information shall be given to the employees;

- (b) transferor shall give the information referred to in paragraph (a) above within a reasonable time before the transfer is effected;

Dismissal because of economic, technical and other reasons and termination of contract of employment because of substantial change in working conditions.

Bankruptcy, liquidation or other insolvency proceeding.

Status of representatives of employees.

Information and consultation.

- (c) transferee shall give the information referred to in paragraph (a) above within a reasonable time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.

(2) The obligations provided by this section shall apply irrespective of whether the decision resulting in the transfer had been taken by the employer or by a person controlling the employer.

(3) The fact that information was not given by the person controlling the employer shall not affect the obligations under this Ordinance, to provide information or to consult.

(4) If the transferor or the transferee envisages taking measures affecting his employees, he shall consult his employees or the representatives of his employees within a reasonable time on such measures with a view to reaching an agreement.

Penalties.

9. - (1) An employer who resorts to insolvency proceedings for the purpose of defeating the rights of his employees under this Ordinance, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding one thousand pounds (£1,000).

(2) An employer who contravenes the provisions of section 8 with respect to giving information or having consultations shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five hundred pounds (£500).

Compensation.

10. - (1) Where a contract of employment is terminated, whether by the transferor or the transferee, by reason of a transfer and the termination is not due to economic, technical or organisational reasons which require changes in the level of employment, the termination shall be deemed to be an unlawful dismissal and the employee shall be entitled to compensation calculated on the basis of the years of employment and the terms of employment in force applicable at the time of the transfer. The provisions of the Termination of Employment Ordinance shall apply with respect to other matters arising from the termination.

(2) A termination made before the transfer but made because of the transfer shall be deemed to be a termination by reason of the transfer.

(3) Subject to subsection (1) above where the employer terminates a contract of employment for economic, technical or organisational reasons, whether before or after the transfer, he shall be liable to compensate the employee in accordance with the provisions of the Termination of Employment Ordinance.

Ordinances 5/80,
1/81, 4/83, 5/88,
5/90, 2/91 and
4/95.

Crown
employment.

11. - (1) Subject to subsection (4) below the provisions of this Ordinance shall have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees.

(2) In this Ordinance "Crown employment" means employment under or for the purposes of the Administration or Her Majesty's Government in the United Kingdom or any officer or body exercising on behalf of the Crown functions conferred by a provision of an Ordinance.

(3) For the purposes of the application of this Ordinance in relation to Crown employment in accordance with subsection (1) above -

- (a) references to an employee shall be construed as references to a person in Crown employment, and
- (b) references to a contract of employment shall be construed as references to the terms of employment of a person in Crown employment.

(4) The provisions of this Ordinance shall not apply to service as a member of the naval, military or air forces of the Crown.

12. The Administrator may make regulations generally for the effective application of this Ordinance and for putting it into effect and any such regulations may make different provision for different cases or classes of case and may contain such incidental, supplementary or transitional provision as appear to the Administrator to be necessary or expedient for the purposes of this Ordinance or the regulations.

Regulations.

5th July 2001
(107/4/3)

G. BARLOW,
Acting Chief Officer.



