

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

15<sup>th</sup> July, 2020

**Proposition No. P.2020/41**

**COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY**

**Proposals for a New Discrimination Ordinance**

**AMENDMENT**

Proposed by: Deputy S T Hansmann Rouxel

Seconded by: Deputy J S Merrett

To add new Propositions, numbered Proposition 21 and 22 and 23 and 24, as follows:

“21. In accordance with Rule 54(1) of the Rules of Procedure of the States of Deliberation and their Committees, to agree that with effect from the start of the next States term (i.e. October 2020) there shall be a Committee of the States constituted as follows and listed in Appendix A of the aforementioned Rules of Procedure:

- **Title – Equality & Rights Advisory Committee**

- **Constitution**

A President who shall be a member of the States and five other members who need not be members of the States, all elected on the nomination of the Committee *for* Employment & Social Security. And where a members of Employment and Social Security Committee and of the Policy & Resources Committee may not be members of the committee.

- **Duties & Powers**

- To advise the States of Deliberation on matters relating to equality and rights.
- To provide a rights and equality perspective to States Committees and the Assembly in development of policies and legislation which engage rights and equality.
- To promote meaningful consultation with affected parties at an early stage in the development of new policies and legislation.
- To monitor the implementation of conventions and protocols that have been extended to Guernsey, and ensure that rights and equalities are embedded in States’ processes.

- To produce reports on specific areas of rights if there a public interest identified by the Advisory Committee.
- To investigate and report on issues if directed to do so by the Assembly.
- To produce an Annual Report to the States of Deliberation.
- To fulfil the responsibilities set out in Annex One to the mandates of committees of the States.

- **Operational Functions**

To deliver or oversee the delivery of, and to be accountable to the States for, any operational functions conferred on the Committee by way of extant legislation or resolutions of the States or which may be allocated to the Committee in Annex Two to the mandates of committees of the States.

“22. To direct that before the end of the next States’ term in June 2025 the Equality & Rights Advisory Committee shall lay before the States its advice, together with appropriate Propositions, on whether there is a need for the Committee to continue to exist in the light of experience during the 2020-25 States’ term.

“23. To direct that when nominating members of the Equality & Rights Advisory Committee, the Committee *for* Employment & Social Security shall ensure that the membership of the Committee represents plurality in social interests and includes at least one member able to provide the perspective of people with disabilities.”

“24. To direct the Policy & Resources Committee to make available from the capital reserve a sum not exceeding £35K for the initial budget of the Committee with further work done to consider the full responsibilities of its mandate once set up.”

#### Rule 4(3)

Treasury have advised they are unable to advise on the full resource implications of the proposed mandate in the time allowed. However the work completed in researching the Equality and rights organisation provided some detail regarding the cost of 7 commissioners at £19,000 per annum and the hidden cost of Civil Servant support would be in the region of £21,000.

## Report Submitted under rule 24(1)

This amendment seeks to set up an Equality and Rights Advisory Body/Committee in the States of Deliberation in order to, in part, address the short fall in provisions in the proposed Equality and Equal Opportunities Service.

### **1. How do the current proposals for an Employment and Equal Opportunities Service fall short of the Equality Rights Organisation envisaged in the Disability and Inclusion strategy?**

1.1. The outline of the Committee's decision to propose the creation of an Employment and Equal Opportunity Service is included in the committee's policy letter with details regarding the other short list options in appendix 7. Option 3 as the preferred option does fall short in many areas. The Committee acknowledges that it doesn't meet the criteria to adhere to the Paris principles but sees it as a pragmatic first step which leaves the door open to potentially developing an Equality Rights Organisation in the future.

1.2. Short falls in the proposed Employment and Equal Opportunities Service:

- It is not independent
- Does not provide advice to government
- Does not monitor the implementation of conventions and the progressive realisation of rights
- Does not provide an external mechanism to contribute to the reports to the UN (via the UK)
- Does not have power to pursue complaints in the public interest
- Does not have powers to investigate

### **2. Current gaps/areas of weakness in implementation of rights and conventions within the States**

2.1. A report is produced annually by External Relations (on behalf of P&R) which forms part of the United Kingdom's submission to the United Nations. (The latest report can be found here <https://www.gov.gg/CHttpHandler.ashx?id=114690&p=0>) It demonstrates how Guernsey is meeting its obligations in respect of human rights, and identifies areas for improvement. A list of the Human Rights conventions and protocols which have been extended to Guernsey can be found in Appendix 3 of the policy letter.

2.2. There is no means for independent (non-States) input into this report, which is a function that is achieved in other jurisdictions by independent equality rights organisations. The progressive realisation of human rights in Guernsey isn't actively assessed in any

meaningful way by the States, other than the routine submission of this report. If it was independently monitored it would help inform policy and legislation development in areas where rights are involved.

- 2.3. When policy or legislation is developed in the areas which engage contentious rights issues there is no means for the States to seek advice around these areas. For instance, during the debate on Assisted Dying, research into how other jurisdictions dealt with the topic revealed countless examples of Independent Rights Organisations in those jurisdictions providing in-depth advice on how rights are engaged and interact with any proposed changes in the law.
- 2.4. There have been several examples throughout this term where the Guernsey Disability Alliance has had to proactively seek to be consulted on areas of policy and legislation development which affect people with disabilities. The issue has been raised as being in contravention of Article 4.3 of the United Nations Convention on the Rights of People with Disabilities which states that: 'States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations' in the development of legislation and policies'. Although this has been raised several times, there is no official recourse for the GDA.
- 2.5. There is an independent Disability Champion within the States. However, this role is not recognized within the States' Rules of Procedure and therefore doesn't benefit from the support of the civil service nor the legal protection that usually extends to Deputies carrying out official States' roles. This constrains the postholder's ability to provide appropriate support and representation to disabled people, as part of the championing of disability rights in Guernsey.

### **3. How would this amendment seek to address short fall in the EEOS and gaps in States processes?**

- 3.1. The Equality and Rights Advisory Committee would be a non-governmental body with a political Chair.
- 3.2. The President and Members of the Advisory Committee would be elected by the States, on the nomination of the Committee *for* Employment & Social Security. Members of the Committee for Employment & Social Security and of the Policy and Resources Committee would not be permitted to join the Advisory Committee.
- 3.3. The five non-States Members would be recruited for their ability to bring input from a variety of different human rights perspectives and lived experiences. At least one of the five roles would always be reserved for a member representing the perspective of people with disabilities, in view of the States' longstanding commitment to having a Disability Champion, and the particularly complex barriers often faced by those seeking to ensure equality for disabled people.

- 3.4. The Advisory Committee would provide a platform for independent monitoring of rights in Guernsey. Its elected President would have a voice in the States, and would be able to provide valuable input on a range of policy matters that involve rights and inequality.
- 3.5. The Equality and Rights Advisory Committee would be able to proactively identify areas flagged up by monitoring (such as the lack of consultation mentioned in 2.4.) and provide advice to committees on how processes can be improved to address this across the States. Proactively seeking to embed equality in the culture of the States rather than assessing rights as a tick box exercise.
- 3.6. Where individuals or groups in Guernsey are concerned that their Convention rights are not being respected by the States (such as in the case of Article 4.3 on consultation), they would be able to register this concern with the Advisory Committee. This would not be a legal process, but would allow the Advisory Committee to provide impartial challenge and recommend improvements to processes and practices where needed.
- 3.7. Committees would be able to seek advice from the Advisory Committee when developing policy or legislation in areas of contentious rights issues. If this is done at the beginning of the process, guidance from the Advisory Committee could help inform thoughtful and sensitive consultation. The Advisory Committee could also provide analysis at the policy letter stage (through a letter of comment or a report or advice to Policy and Resources to include in their letter of comment).
- 3.8. The Equality & Rights Advisory Committee would be wholly separate from the Employment & Equal Opportunities Service but would complement the work it is doing. In particular, it would introduce some of the functions (such as a rights-based approach to policy development, and independent monitoring of Convention rights) which the EEOS, because it remains within the civil service, cannot do.

#### **4. Examples of Equality Rights Organisations and their interactions with parliament in other jurisdictions.**

- 4.1. Monitoring of human rights tends to involve a blend of independent and parliamentary processes. For example, in England, Scotland and Wales there is the The Equality and Human Rights Commission which undertakes awareness raising, research and monitoring of human rights. The Scottish Human Rights Commission focuses on the activities of the Scottish Parliament as a devolved administration. There are two cross parliamentary committees which provide scrutiny on these issues: the Joint Committee on Human Rights and Women and Equalities Committee.

- 4.2. In Jersey the Children’s Commissioner holds independent office, and monitors human rights and protection of the rights of children and young people. The Commissioner has special permission (as non-states member) to address Jersey’s Assembly directly.
- 4.3. In South Africa, for example, all national reports to international monitoring bodies have to be debated in Parliament, and Parliament must ensure that the reports contain a wide variety of views, including those of civil society. Parliament holds debates and public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens’ groups. This model recognises that Parliament should play a leading role in how those recommendations are put into effect at the national level.
- 4.4. This model would also be a blend of independent input with Guernsey’s traditional structure of government, recognizing that policy decisions are always ultimately a matter for the States, but that an independent perspective can help to ensure that, as far as possible, everyone is treated fairly by those decisions.

## **5. Timescale**

- 5.1. It is proposed that the Advisory Committee is set at the start of the 2020-2025 States’ term. The proposal is that the Advisory Committee is set up initially for one term only, on a trial basis, and can be extended or disbanded at the end of that period.
- 5.2. It is hoped that some functions which are initially carried out by the Advisory Committee could be superseded by the development of a fully independent Equality & Rights Organisation in due course.

## **6. Proposal for an Equality and Rights Advisory Committee of the States<sup>[ME1]</sup>**

### **6.1. Constitution**

A president who shall be a member of the States and five members who need not be members of the States. The members should represent a plurality in social interests with at least one member providing the perspective from people with disabilities.

### **6.2. Purpose**

To support the progressive realisation of rights within the States and to promote an inclusive rights culture across the States.

### **6.3. Responsibilities and functions**

- Advise the States of Deliberation on matters relating to equality and rights.
- Provide a rights and equality perspective to States Committees and the Assembly in development of policies and legislation which engage rights and equality.
- Promote meaningful consultation with affected parties at an early stage in the development of new policies and legislation.
- Monitor the implementation of conventions and protocols that have been extended to Guernsey, and ensure that rights and equalities are embedded in States' processes.
- Produce reports on specific areas of rights if there a public interest identified by the Advisory Committee.
- Investigate and report on issues if directed to do so by the Assembly.
- Produce an Annual Report to the States of Deliberation.

## **7. Resources**

7.1. In some of the supporting information to this policy letter, it was estimated that the cost of appointing commissioners to an independent equality body would be around £19,000 a year. This seems a reasonable estimate for the proposed Equality & Rights Advisory Committee. It would provide for members to be remunerated at the non-States Member rate for most Committees (a little over £2,000 per person per year), leaving a small non-pay budget of about £8,000 per year. It is anticipated that the Advisory Committee would draw largely on its own knowledge and expertise, rather than commissioning external advice.

7.2. The Advisory Committee would require a Principal Officer to provide practical and administrative support. This is unlikely to be a full-time role, and a budget of £35,000 is recommended to establish this role on a part-time basis.

## **8. Conclusion**

8.1 An Equality and Rights Organisation should be independent and autonomous as it should have a role in holding government to account.

8.2 This proposal is not intended to replace an independent organization but rather as an interim solution where some of the proposed functions of an Equality Rights Organisation can be delivered in a cost effective and pragmatic way.

8.3 Without this proposal the States will continue to struggle with effective development and monitoring of rights and the community will not have a direct mechanism to decisions that may profoundly affect the enjoyment of their human rights.