

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

28th September 2022

Proposition No. P.2022/70

Committee for Employment and Social Security

The Prevention of Discrimination (Guernsey) Ordinance, 2022

MOTION UNDER ARTICLE 7(1) OF THE REFORM (GUERNSEY) LAW, 1948

Proposed by: Deputy N. Inder

Seconded by: Deputy M. Helyar

To suspend the Rules of Procedure to the extent necessary to permit the Amendment set out below to be considered.

AMENDMENT

Proposed by: Deputy N. Inder

Seconded by: Deputy M. Helyar

At the end of the Proposition add: “, subject to the amendments indicated below”.

1. In section 50(1), for "in the sum of –" to the end, substitute "in the sum of up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26.", and in section 50(2) and (3) for "subsection (1)(a)" substitute "subsection (1)".
2. In section 51(1), for "in the sum of –" to the end, substitute "in the sum of up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26, and section 50(2) to (4) apply to the calculation of an amount of an award of compensation under this section."
3. In section 55(4)(a), for "to be appropriate –" to the end, substitute "to be appropriate, nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and".
4. In section 56(2), from "joined complaints is -" to the end, substitute "joined complaints is nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39)".
5. In section 56(3), for "limits" substitute "limit", and for "do" substitute "does".

Rule 4(1) information

- a) The proposition contributes to the States' objectives and policy plans as it is in line with the States strategic objective of introducing legislation to prevent discrimination.
- b) In preparing the proposition, no consultation has been undertaken with Members of the Committee for Employment and Social Security.
- c) The proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

Explanatory Note

The Amendment seeks to remove the element of compensation for "injury to feelings, hurt or distress" in any case where pay is awarded under the Ordinance - principally this is likely to be in disputes between employers and employees.

It does not seek to remove the possibility of compensation for "injury to feelings" where the Ordinance is contravened in the context of the provision of goods and services.

Should the States agree the Prevention of Discrimination (Guernsey) Ordinance, 2022, unamended, the following examples are possible outcomes:

Un-Amended Ordinance

Employer

An employer who has discriminated against an employee could be liable up to 6 months of salary and a further finding of up to £10000 for "Injury to Feelings". In the current context of the average salary in Guernsey being around £40,000 the bill to the employer could be £30,000

Goods and Services

If a member of public is refused goods or services there is a potential liability of up to £10000 injury to feelings along with any actual financial loss the person has suffered.

Amended Ordinance

Employer

An employer who has discriminated against an employee could be liable up to 6 months of salary.

Goods and Services

If a member of public is refused goods or services there is a potential liability of up to £10000 injury to feelings along with any actual financial loss the person has suffered.

It will be claimed that this is what happens in the UK and Jersey and should be adopted; we disagree that this will make good law making. And would go further to say that although not technically 'double jeopardy' (i.e. recovering twice for the same loss) in the employment/employee scenario, it certainly feels like it.

The Discrimination Ordinance should go no further than current Guernsey employment law where the maximum compensation for unfair or constructive dismissal under the Employment Protection (Guernsey) Law, 1998 is 6 months' pay. It is also worth noting that there is no concept of 'injury to feelings' in the Employment Protection Law.