

**REPLY BY THE MINISTER OF
THE COMMERCE AND EMPLOYMENT DEPARTMENT
TO A QUESTION ASKED PURSUANT TO RULE 6 OF THE
RULES OF PROCEDURE BY DEPUTY C. J. GREEN**

Question 1

Does the Commerce and Employment Department have any plans at present to introduce a new statutory right in Guernsey for employees to request flexible working arrangements, either based on the UK model or otherwise?

Answer

The Department has no plans to propose the introduction of legislation covering this issue at the present time but firmly agrees that employees and employers can benefit from the implementation of flexible working when this suits the needs of the business.

With this in mind, the Department has asked that this topic be included in the work of Skills Guernsey. The Department considers that much can be achieved by an educational approach to bring about change without the need to introduce this as a statutory right at the present time.

Question 2

If Commerce and Employment does not currently have any such plans, would the Department be prepared to consider the introduction of such a new employment right; and would they be prepared to consult employer groups, businesses, trade unions, members of the public and others on the desirability or otherwise of such a new measure?

Answer

The Department does not wish to shut the door on proposals that might benefit the Island's economy and its working population. It does however need to ensure that actions are based on evidence of need, and in the specific case of the introduction of legislation, are justifiably proportionate to the actual problem.

In 2009 the Department surveyed flexible working practices in Guernsey with employers and employees. The survey showed that a significant proportion of employers were already offering flexible working in some form and a further percentage said they would positively consider it. Bearing in mind that some jobs do not lend themselves to flexibility as much as others, the result suggests that the local job market has already developed an encouraging degree of flexibility of work patterns, without the need for further statutory regulation.

It is worth noting that, in the view of the Employment Relations Service, this issue is already the subject of some protection through existing unfair dismissal and sex discrimination legislation. In practical terms, employees have a right to ask for a variation of contract as it is of its nature an agreement between two parties which can be changed if they agree. Employers have the right to agree or not to the request. If they reject a request unreasonably, and that leads to the termination of employment, the aggrieved employee may be able to register a claim with the Tribunal. Also a rejection based on gender considerations may result in a claim brought under the legislation covering sex discrimination in employment.

To assist the Department in prioritising its work in respect of employment protection, a wide review of potential employment protection legislation was done in late 2010 and reported in 2011. The right to request flexible working was included in the list of possible protections in the consultation. This protection received 26% approval and was placed joint 13th on the list of 21 possible protections in the survey.

Having considered the consultation outcome, the Department took the view that other protections were a far higher priority and prioritised 5 items for further development work. Each of these items was selected by more than 55% of respondents. Staff are now engaged on work on Maternity Provisions and Disability Discrimination.

Question 3:

Would the Commerce and Employment Department be prepared to consider what other forms of statutory regulation (if any) could be helpful in enabling ordinary working families in Guernsey to strike a better balance between work responsibilities and family commitments / leisure time?

Answer

The Department would consider evidence based proposals for such legal protections, but would wish to stress that it believes that the protection provided in this, and indeed any, case has to be balanced against the bureaucratic burdens on business that inevitably increase with more statutory regulation.

Legislation should be seen as a last resort or backstop to be used when it is clear that other approaches have been tried and have not corrected a situation that patently needs correction.

Date of Receipt of the Question: 24th February 2013

Date of Reply: 8th March 2013