

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* EMPLOYMENT AND SOCIAL SECURITY

EMPLOYMENT AND DISCRIMINATION TRIBUNAL: REMOVAL OF THE RETIREMENT AGE
OF PANEL MEMBERS AND
DESIGNATION OF THE CONVENOR AND DEPUTY CONVENOR

Propositions

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled "Employment and Discrimination Tribunal: removal of the retirement age of Panel members and designation of the Convenor and deputy Convenor", they are of the opinion:-

1. To remove the requirement for members of the Employment and Discrimination Panel ("the Tribunal Panel") to retire on reaching the age of 70;
2. To designate Mrs Tina Jane Le Poidevin as Convenor of the Tribunal Panel until 28th February 2018;
3. To designate Mrs Christine Diane Le Lievre as deputy Convenor of the Tribunal Panel until 28th February 2018; and
4. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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EMPLOYMENT AND DISCRIMINATION TRIBUNAL: REMOVAL OF THE RETIREMENT AGE
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DESIGNATION OF THE CONVENOR AND DEPUTY CONVENOR

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

5 June 2017

Dear Sir

1. Executive Summary

- 1.1 The Employment and Discrimination Tribunal Panel ("the Tribunal Panel") is made up of independent people, appointed under the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 ("the Ordinance"), from which a Tribunal of three is formed to hear and determine complaints under relevant employment and discrimination legislation, such as unfair dismissal, sex discrimination and failure to be paid the minimum wage.
- 1.2 Under the Ordinance the States must designate two members of the Tribunal Panel as Convenor and deputy Convenor; their role is to appoint the three tribunal members and the chair of the tribunal. Under the Ordinance, members must retire from the Tribunal Panel on reaching the age of 70.
- 1.3 The Committee recognises that age alone is not a good indicator of a person's mental or physical capability and that the Tribunal Panel benefits from a membership which contains a diverse range of skills and experience. The Committee is, therefore proposing that the compulsory retirement age for members of the Tribunal Panel be removed.
- 1.4 Due to the recent retirement of the current Convenor, Peter Woodward, on the grounds of age, there is a need for the States to designate another Panel

member as the Convenor for the remaining term of office, until 28th February 2018.

2. Background

- 2.1 Within the last 12 months, two experienced members of the Tribunal Panel have retired on the grounds of age, as required by the Ordinance, despite a desire to continue in these important roles. These enforced retirements have caused the Committee to review this aspect of the Ordinance and to recognise that age alone is not a good indicator of a person's mental or physical capability to contribute to the Island through either employment or the voluntary sector. The Committee also recognises that the Tribunal Panel benefits from a membership which contains a diverse range of skills and experience.
- 2.2 The Committee is, therefore, recommending that the compulsory retirement age for Tribunal Panel members in the Ordinance be removed. This will mean that members will be appointed by the States for terms of three years (or such shorter period as the States may specify) but will not be forced to retire if they attain the age of 70, and indeed would be eligible for appointment or reappointment to the Tribunal Panel after that age. The short-term nature of the appointments provides members of the Tribunal Panel with a regular opportunity to retire or for the States to re-approve their appointments.

3. Policy & Strategic Decisions

- 3.1 The Tribunal Panel, from which members are drawn for Tribunal hearings, needs to consist of an adequate number of appropriately skilled people. Removing the retirement age enables the States to extend the availability of the relatively small pool of people who have the required expertise to be Tribunal Panel members. This approach aligns with the direction of policies related to longer working lives, which recognise that some people wish to continue working past State Pension Age and that many employers recognise the value of retaining older people's knowledge and expertise in the workplace.

4. Designation of Convenor and deputy Convenor

- 4.1 There is a requirement under Section 1(4) of the Ordinance that the States designate one member of the Tribunal Panel as Convenor and another as deputy Convenor for the purpose of constituting each Tribunal. The Committee is proposing that Mrs Tina Jane Le Poidevin (the current deputy Convenor) be designated as Convenor of the Panel and that Mrs Christine Diane Le Lievre (a current Panel Member) be designated as deputy Convenor with immediate effect and until the current term of office of Tribunal Panel members comes to an end on 28 February 2018.

5. Financial Implications of Repealing the Retirement Age Provision

- 5.1 The financial implications of repealing the retirement age provision are nominal. There is a slight increase in the administration necessary to maintain a larger panel of Tribunal members. However, costs may be slightly reduced in relation to the cost of recruiting additional Panel members, if existing Panel Members can serve for longer.

6. Engagement, Consultation, Mandate and Objectives

- 6.1 Through the drafting of this Policy Letter, the Committee has considered the need to consult with other bodies in accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees. Given the nature of the change and the minor impact on other Committees and bodies, consultation was not deemed necessary on this occasion.
- 6.2 The Committee has consulted with the Law Officers, who have not identified any legal difficulties with the propositions contained within this Policy Letter.
- 6.3 The propositions contained within this Policy Letter relate to the Committee's mandated responsibilities for social inclusion and labour market legislation and practices. In addition, the propositions contribute to the States of Guernsey's Longer Working Lives Strategy which aims to support people who want to work up to or past pension age. The propositions are also in line with the visionary themes of the Policy & Resource Plan, approved by the States in November 2016 (Billet d'État XXVIII of 2016, Article 1), which are to be inclusive and equal.
- 6.4 The preferred date when the Committee seeks the item to be considered by the States is 6 September 2017.

7. Propositions

The States are asked to decide whether they are of the opinion:

1. To remove the requirement for members of the Employment and Discrimination Panel ("the Tribunal Panel") to retire on reaching the age of 70;
2. To designate Mrs Tina Jane Le Poidevin as Convenor of the Tribunal Panel until 28th February 2018;
3. To designate Mrs Christine Diane Le Lievre as deputy Convenor of the Tribunal

Panel until 28th February 2018; and

4. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

8. Committee Support for Propositions

- 8.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

M J Fallaize
J A B Gollop
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

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PANEL MEMBERS AND
DESIGNATION OF THE CONVENOR AND DEPUTY CONVENOR

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

5th June, 2017

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee requests that the Proposition be considered at the States' meeting to be held on 6 September 2017.

We believe it is important that the States consider the matter at the earliest available opportunity in order to ensure the continuing smooth operation of the Employment & Discrimination Tribunal.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

M J Fallaize
J A B Gollop
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member