

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

15th July, 2020

Proposition No. P.2020/41

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

PROPOSALS FOR A NEW DISCRIMINATION ORDINANCE

AMENDMENT

Proposed by: Deputy S L Langlois

Seconded by: Deputy M K Le Clerc

1. To replace Proposition 3 with the following:

“3A (i) To direct the Committee *for* Employment & Social Security to bring detailed policy proposals to expand the grounds covered in the Ordinance referred to in Proposition 1 to the States for consideration. This should be in **two Phases**, in accordance with the proposals and timeline set out as follows:

Implementation of phase 1

2021 – Training stage: Provision of training and information, etc, in respect of phase 1, as approved by the States.

2022 – Implementation of phase 1: Enactment of Ordinance in respect of phase 1 covering the grounds of disability, carer status and race.

Phase 2

2023 – Phase 2 policy letter returns to the States: Setting out policy proposals in respect of the grounds of age, religious belief and sexual orientation and the grounds covered in the existing Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (i.e. sex, marital status, gender reassignment, and pregnancy and maternity (with any appropriate updates in the framing of those grounds)). Also including proposals to introduce a legal right (from 2027) to equal pay for men and women workers for work of equal value and consideration of multiple and intersectional discrimination.

2024 – Implementation of phase 2 (excluding equal pay for work of equal value): Amendment Ordinance, adding phase 2 grounds of protection to the new Discrimination Ordinance, to be brought to the States for approval and to enter into force.

Later entry into force in respect of some provisions

2026 – Discrimination in education: Provisions relating to discrimination in education to come into force no later than 2026.

2027 – Accessibility action plans, complaints relating to a “physical feature” of a building and equal pay for work of equal value: The final provisions of the Ordinance relating to (i) the requirement for public sector goods, services and education providers to prepare accessibility action plans in relation to the public-facing aspects of their services; (ii) the ability to bring discrimination complaints relating to a “physical feature” of a building, and (iii) the introduction of the right to equal pay for men and women workers for work of equal value come into effect.

Review

2029 – Post-implementation review: To take place no later than two years after all provisions of the Ordinance are in force. May take place sooner if required.

- (ii) To direct the Policy & Resources Committee to ensure that the Committee *for* Employment & Social Security is provided with sufficient resources, through its annual budgets and/or through the provision of shared States’ resources, to deliver the remaining policy and drafting work within the timeframe set out in this Proposition.

Or, should Proposition 3A. not be carried,

- 3B (i) To direct the Committee *for* Employment & Social Security to bring detailed policy proposals to expand the grounds covered in the Ordinance referred to in Proposition 1 to the States for consideration. This should be in **three Phases**, in accordance with the proposals and timeline set out as follows:

Implementation of phase 1

2021 – Training stage: Provision of training and information, etc, in respect of phase 1, as approved by the States.

2022 – Implementation of phase 1: Enactment of Ordinance in respect of phase 1 covering the grounds of disability, carer status and race.

Phase 2

2023 – Phase 2 policy letter returns to the States: Setting out policy proposals in respect of the grounds of age and religious belief. Also including consideration of multiple and intersectional discrimination.

2024 – Implementation of phase 2: Amendment Ordinance, adding phase 2 grounds of protection to the new Discrimination Ordinance, to be brought to the States for approval and to enter into force.

Phase 3

2025 – Phase 3 policy letter returns to the States: Setting out policy proposals in respect of sexual orientation and the grounds covered in the existing Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (i.e. sex, marital status, gender reassignment, and pregnancy and maternity (with any appropriate updates in the framing of those grounds)). Also including proposals to introduce a legal right (from 2027) to equal pay for men and women workers for work of equal value.

2026 – Implementation of phase 3 (excluding equal pay for work of equal value): Amendment Ordinance, adding Phase 3 grounds of protection to the new Discrimination Ordinance, to be brought to the States for approval and to enter into force.

Entry into force in respect of some provisions

2026 – Discrimination in education: Provisions relating to discrimination in education to come into force no later than 2026.

2027 – Accessibility action plans, complaints relating to a “physical feature” of a building and equal pay for work of equal value: The final provisions of the Ordinance relating to (i) the requirement for public sector goods, services and education providers to prepare accessibility action plans in relation to the public-facing aspects of their services; (ii) the ability to bring discrimination complaints relating to a “physical feature” of a building, and (iii) the introduction of the right to equal pay for men and women workers for work of equal value come into effect.

Review

2029 – Post-implementation review: To take place no later than two years after all provisions of the Ordinance are in force. May take place sooner if required.

- (ii) To direct the Policy & Resources Committee to ensure that the Committee *for* Employment & Social Security is provided with sufficient resources, through its annual budgets and/or through the provision of

shared States' resources, to deliver the remaining policy and drafting work within the timeframe set out in this Proposition."

2. In Proposition 4 to substitute the words: "in Phase 3 of the development of the Ordinance" with the words: "in accordance with the timetable set out in Proposition 3A or 3B (as the case may be)".

EXPLANATORY NOTE

Having noted that amendments 1, 2 and 3 seek to accelerate aspects of the development of the multi-ground Discrimination Ordinance, the Committee wishes to give the States the option of consolidating phases 2 and 3 into one phase (i.e. phase 2), while adhering to the normal States process whereby detailed policy proposals for new legislation are approved prior to legislative drafting.

If the timescales set out in option A are adhered to, this would potentially have the effect of bringing forward by two years (from 2026 to 2024) the right to make a complaint under the proposed new Discrimination Ordinance on the basis of sexual orientation and the expansion of protection from discrimination on the basis of sex, marital status, gender reassignment, and pregnancy and maternity (with any appropriate updates in the framing of those grounds, as indicated in the policy letter) beyond the field of employment.

The Committee is proposing this amendment as an alternative to amendments 1, 2 and 3 (although it notes that amendment 2 goes further than option A, and may, therefore, still be debated even if this amendment is approved). Option A keeps together all of the grounds the Committee originally proposed should be included in subsequent phases (unlike amendments 1, 2 and 3) but brings them forwards into phase 2.

It also means that phase 1, for which business organisations have indicated their support, is not affected and that (unlike amendment 2) there is no requirement to carry out additional policy work in relation to phase 1 in parallel with the legal drafting, which is contrary to the normal procedure for legislative drafting.

It also means that, should amendment 8 be approved, which the Committee believes will lead to substantial delays in the implementation timetable, then overall there is likely to be less delay to the full implementation of the proposals and less expense in relation to carrying out reviews as two reviews, rather than three, would be necessary.

By approving this Amendment, States Members will have the option to vote for a two phase or, if this is unsuccessful, a three phase implementation timeline when it comes to general debate.