

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

21st July, 2021

Proposition No. P. 2021/71

POLICY & RESOURCES COMMITTEE

GOVERNMENT WORKPLAN 2021-2025
Investing in Islanders, our Island and our Future

AMENDMENT

Proposed by: Deputy P J Roffey

Seconded by: Deputy H L de Sausmarez

1. In Proposition 4, immediately after “Annex 1” insert “(as amended to take into account the consequences of the rescissions and replacements of the Resolutions set out in Annex 6)”.
2. In Proposition 5, immediately after “Annex 2” insert “(as amended to take into account the consequences of the rescissions and replacements of the Resolutions set out in Annex 6)”.
3. In Proposition 19 at the end, add “, subject to replacing the text appearing immediately after the words “amended as follows:” in the column entitled “Reason for Rescind and Replace” in item 4 of Table 6.2 in Annex 6 (page 221) with the following:

“3. (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, in accordance with the following timeline:

Completion of Phase 1

- **2021 – Training Stage:** Provision of training and information, etc, in respect of Phase 1 as approved by the States.
- **2022 – Implementation Stage:** Enactment of legislation in respect of Phase 1.

Delivery of Phase 2

- **2023 – Phase 2a policy letter:** Protection on the ground of age. Modernisation of the existing Sex Discrimination Ordinance. Consideration of multiple and intersectional discrimination.
- **2023-2024 – Phase 2b policy letter:** Equal pay for work of equal value on the ground of sex, including publication of an economic impact assessment.
- **2024 – Legislation, training and implementation for Phase 2a:** Subject to States approval of policy proposals, Ordinance including Phase 2 grounds brought to the States for approval and implemented (with six-month lead-in period as in Phase 1). Training on new grounds of protection rolled out.
- **2025 – Legislation for Phase 2b:** Subject to States approval of policy proposals, Ordinance on right to claim equal pay for work of equal value on the ground of sex is brought to the States for approval but for enactment no earlier than 2027.

Specific Lead-In Periods

- **2026 – Discrimination in education:** In accordance with Table 8.6.1 of the policy letter, provisions relating to discrimination in education come into effect no later than 2026.
- **2027 – Accessibility:** The provisions of the Ordinance relating to public sector accessibility action plans and complaints in respect of changes to physical features come into effect.
- **Equal pay for work of equal value:** Subject to States approval of policy proposals, statutory right to claim equal pay for work of equal on the ground of sex comes into force at the time approved by the States following consideration of the Committee’s policy proposals in respect of phase 2b, but no earlier than 2027.

Evaluation

- **2029 – Post-Implementation Review:** To take place no more 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 resource, 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 Proposition 3.”

RULE 4(3) INFORMATION

The Committee *for* Employment & Social Security believes that it will be more cost effective to carry out the policy work on equal pay for work of equal value during 2023, at the same time as the policy work in respect of the replacement of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

Carrying out one post-implementation review, rather than three, will result in cost savings.

There is a cost attached to carrying out an economic impact assessment, which is currently unknown, although it is noted that the Policy & Resources Committee is proposing that an economic impact assessment is carried out, so this Amendment does not create additional costs in that regard.

EXPLANATORY NOTE

Clarification of terminology

'Equal pay for equal work' is different to 'equal pay for work of equal value'.

Equal pay for equal work applies when there is 'equal work' meaning that employees perform the same work or substantially equal work for the same employer. When making an equal pay claim, a person would need to demonstrate that the difference in pay is related to one of the grounds of protection – so, for example, if it can be shown that an employer pays male cleaners more than female cleaners. Please note that this would already be considered discriminatory under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 if the difference in pay was based on sex.

Equal pay for work of equal value goes further and allows different jobs within an organisation to be compared. For example, if a person is doing work that is different from that of a worker of the opposite sex in the same organisation, but the different jobs are 'of equal value', that person would be entitled to equal pay. The claimant would have to show that the different work would be 'rated as equivalent' under a job evaluation scheme, had there been one. Job evaluation looks at factors such as skills, knowledge, level of responsibility, effort, etc required to undertake a role. Differences such as payment for extra responsibilities are permitted, provided the differences are not related to the sex of the worker. Pay should be in direct proportion to the level of the job (as measured by job evaluation) in any given organisation.

It is the examination and consideration of the latter concept (equal pay for work of equal value) that the Policy & Resources Committee is seeking to delay through the proposal in Annex 6 (p. 221-225) of the Government Work Plan.

Previous relevant States decisions

In July 2020, the States considered proposals from the Committee *for* Employment and Social Security ('the Committee') for a new Discrimination Ordinance. On 17 July 2020, the States agreed unanimously to the preparation of an Ordinance to outlaw discrimination on the grounds of disability, carer status and race. The States also approved an Amendment to the Committee's proposals, laid by Deputy Parkinson and former Deputy Tooley, which added religious belief and sexual orientation into the first phase of the development of the Ordinance.

The States noted the Committee's intention to recommend, as part of the policy proposals for Phase 2 of the development of the Ordinance, the introduction of the right to equal pay for work of equal value in respect of sex, in accordance with the International Covenant on Economic, Social and Cultural Rights and in order to support the extension of the Convention on the Elimination of All Forms of Discrimination Against Women.

A timetable for the implementation of Phase 1 of the Ordinance and the development and implementation of proposals for Phase 2 of the Ordinance was approved by the States. The Policy & Resources Committee is seeking to alter various aspects of this timetable through the proposal in Annex 6 (p.221-225 of the Government Work Plan) to rescind and replace Resolution 3 of 17 July 2020.

Explanation in respect of this Amendment

To be clear, this Amendment is not seeking States approval to introduce a statutory right to claim equal pay for work of equal value on the ground of sex. What this Amendment is seeking to do is to ensure that the policy research in respect of equal pay for work of equal value on the ground of sex is carried out during this term of government, alongside the policy work in respect of the ground of sex (as approved by the States on 17 July 2020). The Committee believes it would be illogical and less efficient to carry out this policy work separate to the rest of Phase 2 (called Phase 2a in the Government Work Plan), which includes the ground of sex, given that the right to claim equal pay for work of equal value will only apply to the ground of sex.

Once this policy work has been completed, the Committee will consider whether or not to recommend introducing the right to claim equal pay for work of equal value on the grounds of sex and bring a Policy Letter to the States for consideration. The States will be asked to decide whether they agree with the Committee's recommendation.

One of the policy questions to be examined will be how long a lead-in period is required in respect of equal pay for work of equal value. The Committee is of the view that this should not come into force any earlier than 2027, although the implementation timeframe may well be longer than this dependent on the implementation plan, timetable and costings as determined by the policy work.

The Committee agrees with the Policy & Resources Committee that an economic impact assessment with respect to equal pay for work of equal value should be carried out as part of this policy work, provided that the necessary resources can be made available.

However, the Committee is of the view that the post-implementation reviews proposed by the Policy & Resources Committee of Phases 1 and 2a of the new Ordinance are superfluous as they will not inform the policy work on equal pay for work of equal value, because this is quite different to the other forms of discrimination and conduct that will be prohibited under the new Discrimination Ordinance. The Committee remains of the view that a post-implementation review should be carried out no more than two years after all provisions of the Ordinance are in force, although this may take place sooner if required.