

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

28th September 2022

Proposition No. P.2022/70

Committee for Employment & Social Security

The Prevention of Discrimination (Guernsey) Ordinance, 2022

AMENDMENT

Proposed by: Deputy P J Roffey
Seconded by: Deputy H L de Sausmarez

At the end of the Proposition add: "subject to the amendments indicated below".

1. For section 14(6)(a), substitute –

"(a) **"contract of employment"** means a contract of service or apprenticeship, whether express or implied and whether written or oral,".

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) The proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

c) There are no financial implications to the States of carrying the proposal into effect.

Explanatory Note

The definition of "contract of employment" in the Prevention of Discrimination (Guernsey) Ordinance, 2022 ('the Ordinance') matches the definition of the term in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 ('the Sex Discrimination Ordinance'). That Ordinance has operated successfully since 1 March 2006 and the question

of whether, for example, engaging a plumber to fix the boiler is covered, has not been raised or been an issue.

The original policy intent set out in Appendix 4 of the Committee's Policy Letter entitled 'Proposals for a New Discrimination Ordinance' (Billet d'État XV of 2020, Article XV) was clear in excluding a service provision relationship:

"4.1.1 Who counts as an employer?

The Committee intends to take a wide definition of employment which extends to atypical and casual workers. This might extend to certain contexts where a person is described as self-employed **but would not extend to cases where self-employed persons are better understood as having a customer to service provider relationship with their clients.**" *[emphasis added]*

Given that there appears to be doubt regarding whether "a contract personally to execute any work or labour" would cover, for example, a plumber engaged by a householder to fix their boiler, the Committee has decided to lay this Amendment in order to give the States the option of aligning the definition of the term "contract of employment" in the Ordinance with the definition of the same term in the Employment Protection (Guernsey) Law, 1998 ('the Employment Protection Law'). This well-established definition clearly excludes the plumber-type situation and any like situation. The Committee considers that it is important that the definition of this crucial term is well-established. The definition proposed in Amendment 4 is not well-established. The definition proposed in Amendment 4 is narrower than the approved policy intent (see above) and is narrower than the definitions in the Sex Discrimination Ordinance and the Employment Protection Law in so far as it does not include the words "whether express or implied and whether written or oral".