

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 J. Dyke
Seconded by: Deputy C. Le Tissier

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 and shall not include a contract for services."
2. Delete sections 16, 17, 18 and 19 and renumber remaining provisions and amend relevant cross-references accordingly.
3. In section 50(1), delete ", 17" and insert "in respect of a claim not based on discriminatory pay" after "20".
4. In section 53:-
 - a) for the header, substitute: "**Amount of compensation – discriminatory pay.**"
 - b) for subsections (1) and (2) substitute:-

"(1) Subject to section 54 and subsection (2), the award of compensation under section 49 for a contravention of section 14 in respect of a complaint based on discriminatory pay, is a sum equal to arrears of pay, calculated as the sum which would have the effect of putting the complainant in all respects in the position in which the complainant would have been had there been no such contravention.

(2) The maximum time period during which a sum equal to arrears of pay can be calculated under subsection (1) is three years; but (for the avoidance of doubt) compensation shall not be granted in respect of any period prior to the commencement of section 14."

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) In preparing the proposition there have been discussions and communications about the amendment with the President and Members of the Committee for Employment and Social Security and Committees Officers.
- c) The proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

Explanatory Note

1. The definition of "contract of employment" must be tied down in legal terms to cover contracts for service in the traditional way. It should not cover contracts for services e.g. engaging a plumber to fix the boiler.
2. Sections 16,17 and 18 are very novel and go into new territory with equal pay clauses with potentially far reaching and unpredictable implications beyond discrimination. Section 14 already covers discrimination in terms of employment generally which will include pay. That will remain and matches the equivalent Jersey provision. Section 19 seeks to outlaw pay disclosure provisions. Such provisions are commercially common particularly in finance sector positions. Guernsey should not, for obvious competitive reasons, seek to outlaw common business practice.
3. Section 50 is a consequential change.
4. Section 53 is a consequential change and in subsection (2) the maximum time period for discriminatory pay claims is reduced from six (6) to three (3) years.