P.2023/78

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE PREVENTION OF DISCRIMINATION (COMPENSATION) REGULATIONS, 2023

The States are asked to decide -

Whether, after consideration of the Policy Letter entitled 'The Prevention of Discrimination (Compensation) Regulations, 2023', dated 3rd July 2023, they are of the opinion -

1. To approve the Prevention of Discrimination (Compensation) Regulations, 2023 (as set out in the Appendix to this Policy Letter).

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE PREVENTION OF DISCRIMINATION (COMPENSATION) REGULATIONS, 2023

The Presiding Officer
Royal Court
St Peter Port
Guernsey

3rd July 2023

Dear Sir

1. Explanation

1.1 The Prevention of Discrimination (Guernsey) Ordinance, 2022[1] ('the Prevention of Discrimination Ordinance'), which has been approved by the States and comes into force on 1 October 2023, gives the Committee *for* Employment & Social Security ('the Committee') the power to make regulations with respect to the calculation of compensation for injury to feelings, hurt and distress. During the States debate on the Prevention of Discrimination Ordinance an amendment[2] was passed meaning that any regulations made by the Committee under the Ordinance would not have effect unless and until approved by the States (termed the 'affirmative procedure').

1.2 A person cannot make a successful discrimination complaint simply because their feelings have been hurt – they need to be able to demonstrate that they have been discriminated against or harassed on the basis of one of the grounds of protection, and, if the Employment and Discrimination Tribunal ('the Tribunal') finds in favour of the complainant, then compensation is available for injury to feelings, hurt or distress.

1.3 The maximum award for this type of compensation is set out in the Prevention of Discrimination Ordinance at £10,000. The Prevention of Discrimination (Compensation) Regulations, 2023 (as set out in the Appendix to this Policy Letter) prescribe that, where the Tribunal has decided that there should be an amount payable to a complainant for injury to feelings, hurt or distress as part

[1] The Prevention of Discrimination (Guernsey) Ordinance, 2022.
[2] Amendment to Proposition No. P.2022/70.

of an award of compensation, the Tribunal should, after considering all the facts and circumstances of the case, decide an amount that is just and equitable within one of the following bands -

(a) **the lower band:** an amount payable of between £500 and £3,000 for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence,

(b) **the middle band:** an amount payable of between £3,000 and £6,000 for serious cases, which do not merit an award in the top band, and

(c) **the top band:** an amount payable of between £6,000 and £10,000 for the most serious cases, such as where there has been a lengthy campaign of discrimination or harassment.

1.4 The States is asked to approve the Prevention of Discrimination (Compensation) Regulations, 2023.

1.5 The Committee has made equivalent regulations under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005[3] ('the Sex Discrimination Ordinance') and the Employment Protection (Guernsey) Law, 1998[4] ('the Employment Protection Law'), which will apply where the Tribunal has decided that it is appropriate to make an award of compensation under the Sex Discrimination Ordinance, or as part of a joined complaint under the Employment Protection Law in respect of injury to feelings, hurt or distress. These Regulations are not subject to the affirmative procedure and so will come into force on 1st October 2023 for complaints made after this date.

2. Compliance with Rule 4 of the Rules of Procedure

2.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, propositions laid before the States.

2.2 In accordance with Rule 4(1)(a), the Committee confirms that this is part of the work on phase one of the Prevention of Discrimination Ordinance which is a priority under the Government Work Plan.

2.3 In accordance with Rule 4(1)(b), it is confirmed that the Committee has not consulted with other Committees or stakeholders in respect of the proposition set out in this Policy Letter as this is considered unnecessary.

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[3] The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (consolidated text).

[4] The Employment Protection (Guernsey) Law, 1998 (consolidated text).

2.4 In accordance with Rule 4(1)(c), it is confirmed that the propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

2.5 In accordance with Rule 4(1)(d), it is confirmed that there are no budget implications in respect of the proposition.

2.6 In this Policy Letter, the Committee has set out its proposals for compensation for injury to feelings, hurt and distress under the Prevention of Discrimination Ordinance and seeks the States support for the proposition, which is based on the Committee's purpose:

> "To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation."

2.7 In accordance with Rule 4(2)(b), it is confirmed that the propositions have the unanimous support of the Committee.

Yours faithfully

P J Roffey
President

H L de Sausmarez
Vice-President

T L Bury
S J Falla
J A B Gollop

M R Thompson
Non-States Member

R J Le Brun
Non-States Member

APPENDIX

GUERNSEY STATUTORY INSTRUMENT

2023 No.

The Prevention of Discrimination (Compensation) Regulations, 2023

Made	*28th June, 2023*
Coming into operation	*1st October, 2023*
Approved by the States	*, 2023*

THE COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY, in exercise of the powers conferred upon it by sections 50(1)(b), 51(1)(b) and (2)(b), 52(b), 55(4)(a) and (b), 56(2)(b)(ii) and 75 of the Prevention of Discrimination (Guernsey) Ordinance, 2022[a], and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amount payable for injury to feelings, hurt or distress.

1. (1) Where the Tribunal has decided that there should be an amount payable to a complainant for injury to feelings, hurt or distress as part of an award of compensation –

(a) under section 49(1)(a) of the Prevention of Discrimination (Guernsey) Ordinance, 2022, or

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[a] Ordinance No. XVIII of 2022. This enactment has been amended.

(b) which is made in a respect of joined employment complaints under section 56 of the Prevention of Discrimination (Guernsey) Ordinance, 2022,

the Tribunal shall calculate the amount in accordance with paragraph (2).

(2) The Tribunal shall calculate an amount payable for injury to feelings, hurt or distress by taking into account the facts and circumstances of the complaint, and then deciding an amount that is just and equitable within one of the following bands –

(a) **the lower band**: an amount payable of between £500 and £3,000 for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence,

(b) **the middle band**: an amount payable of between £3,000 and £6,000 for serious cases, which do not merit an award in the top band, and

(c) **the top band**: an amount payable of between £6,000 and £10,000 for the most serious cases, such as where there has been a lengthy campaign of discrimination or harassment.

Extent.

2. These Regulations shall have effect in the Islands of Guernsey, Herm and Jethou.

Citation.

3. These Regulations may be cited as the Prevention of Discrimination (Compensation) Regulations, 2023.

Commencement.

4. These Regulations shall come into force on 1st October 2023.

Dated this 28th day of June 2023

P. J. ROFFEY

President of the Committee for Employment & Social Security

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the method of calculation for the Employment and Discrimination Tribunal where the Tribunal has decided that it is appropriate to make an award of compensation under the Prevention of Discrimination (Guernsey) Ordinance, 2022 in respect of injury to feelings, hurt or distress. The Regulations also provide for any such compensation to be within one of three bands, and set out the monetary limits of those.

If approved by the States, these Regulations will come into force on 1st October, 2023.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE PREVENTION OF DISCRIMINATION (COMPENSATION) REGULATIONS, 2023

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

3rd July 2023

Dear Deputy Ferbrache

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Employment & Social Security ("the Committee") requests that the Policy Letter entitled 'The Prevention of Discrimination (Compensation) Regulations, 2023' be scheduled for consideration at the States' meeting that is due to commence on 6th September 2023.

This request is being made because the Prevention of Discrimination (Guernsey) Ordinance, 2022 comes into force on 1st October 2023 and the later September States meeting is likely to be concentrated on the Government Work Plan and the Capital Portfolio.

Yours sincerely

Peter Roffey
President

Lindsay De Sausmarez
Vice President

Tina Bury, Steve Falla, John Gollop

Ross Le Brun, Mark Thompson
Non-States Members