

# STATES OF JERSEY



## DISCRIMINATION LAW AND DELAY ON PENSION REFORM

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Lodged au Greffe on 21st June 2011  
by Deputy G.P. Southern of St. Helier

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STATES GREFFE

## PROPOSITION

### THE STATES are asked to decide whether they are of opinion –

- (a) to request the Minister for Home Affairs, in conjunction with other Ministers as necessary, to take the necessary steps –
  - (i) to lodge ‘au Greffe’ by the end of March 2012 a draft Discrimination Law; and
  - (ii) provided that the draft Law is approved by the States, sanctioned by Her Majesty in Council and registered in the Royal Court, then to lodge ‘au Greffe’ within 2 months of that registration, draft Regulations to cover grounds for discrimination on issues including race, sex and age;
- (b) to request the Minister for Treasury and Resources to allocate £250,000 for the implementation of discrimination legislation for 2013 and beyond in the Annual Business Plan 2013 (or in any equivalent future expenditure plan that replaces the Annual Business Plan process);
- (c) to rescind that part of their decision dated 8th June 2011 in which they requested the Minister for Social Security to bring forward as soon as possible legislation to give effect to the proposals to raise the state pension age, and to request the Minister not to bring forward that legislation until the legislation to outlaw age discrimination is in place.

### DEPUTY G.P. SOUTHERN OF ST. HELIER

Note: In accordance with Standing Order 23(a) this proposition has been signed by the following members in relation to the rescindment referred to in paragraph (c) above.

1. Deputy M. Tadier of St. Brelade
2. Deputy of St. Mary
3. Deputy M.R. Higgins of St. Helier

The reasons for bringing this proposition are set out in the report below.

## REPORT

On 8th June 2011 the States passed the proposal (P.58/2011) to raise the States Pension Age (SPA). The Minister for Social Security was adamant that the main reason for the need to act on this issue was to enable older workers to continue working beyond normal retirement age –

*“I am firmly of the view that we are not doing enough to draw on the experience, skills and knowledge of older people. Raising the pension age means that more people will continue working and making a significant contribution to Jersey’s economy. To realise this potential we need to be considering initiatives that encourage and allow older workers to play their full part in the labour market.”(P.58/2011, Foreword)*

He went on to state on page 17 of the report –

*“There are a number of different initiatives which could encourage people to work longer. These, or more likely a mix of them, need to be considered if the full gains from increasing the pension age are to flow through. With 10 years or so before the proposed changes start taking place, there is time for the necessary measures to be considered and introduced.”*

Listed at number 2 on the list of these initiatives was the introduction of age discrimination legislation.

*They might include:*

- *policies to facilitate later working, particularly flexible options, including a gradual step down from full-time work to part-time work to full retirement;*
- ***age discrimination legislation;***
- *incentivising people to delay the time when they stop work;*
- *financial incentives for employers to hire post-SPA workers – in Jersey, employees working beyond SPA pay no employees’ social security contributions, but employers’ social security contributions are still due, even though no further rights to the social security pension can be accrued; post-SPA, the States could consider a reduced rate of employers’ social security or abolish it altogether;*
- *tax breaks for wages earned beyond pension age could be considered to encourage later working, although these might be targeted at those who needed to work;*
- *a strong focus on occupational health – people’s ability to work at older ages, and to enjoy work, is heavily influenced by their health, which in turn is strongly determined by their own lifestyle choices, but also by occupational health factors earlier in life (such as the ergonomic design of workplaces and levels of stress);*
- *a strong focus on the education and training of older workers – at present, training expenditure is often skewed towards younger workers.*

This proposition proposes that we get on with ensuring that one of the fundamental barriers to progress in encouraging older workers to work longer is removed now,

rather than waiting up to 10 years to act. It involves removing the “Default Retirement Age” (DRA), that is, the age at which employers can refuse to allow an employee to continue in work. The situation is summed up in this exchange of e-mails between me and the CEO of Social Security –

*Q. Following the adoption of proposals to raise the States Pension Age (SPA) to 67, can you confirm what rules are in place to govern the age at which any company in Jersey can insist that its employees retire from employment?*

*A. The Employment (Jersey) Law sets an upper age limit on the full right to protection against unfair dismissal. Where there is not a ‘normal retiring age’ for the position held by the employee in that particular employment, the upper age limit is “pensionable age as defined under the Social Security (Jersey) Law 1974”.*

*This means that the upper age limit will automatically reflect any changes to state pension age.*

*An amendment to the Employment Law that would remove the upper age limit for protection against unfair dismissal has already been approved by the States. **However, without the additional protection of age discrimination, there is a risk that some employers might decide not to employ older workers at all, so that particular amendment has not yet been enacted.***

In other words, our ability to “draw on the experience, skills and knowledge of older people” is being blocked by the absence of a Discrimination Law. We may well have passed an increase in the pension age, but we are unable to see the benefits in terms of increased working productivity by the lack of discrimination legislation.

In the meantime, the government in the UK, which has long had a Discrimination Law in place, is maximizing the benefit to be obtained from this potential pool of experienced employees by pressing on at full speed.

### **The UK position**

The UK government is planning to scrap the default retirement age from October 2011. Under the proposal, employers would not be allowed to dismiss staff because they had reached the age of 65. Activists, who have long campaigned against the rule, welcomed the proposal as a “victory” against ageism.

Currently, an employer can force an employee to retire at the age of 65 without paying any financial compensation. The only obligation on an employer is to hold a meeting with the member of staff to discuss plans at least 6 months before their 65th birthday. At the end of that meeting it is entirely at the discretion of the employer whether or not to terminate employment.

Under the plans, no forced retirement notices could be issued after 6th April 2011 – 6 months before the October change.

Rachel Krysz, of the Employers Forum on Age, says it was “really unfair” that people had been forced out of jobs because of their age. “We have to stop these blunt discriminators.”

The charity Age UK, which has led the campaign to end the default retirement age, also welcomes the government's plan. "We have fought a four-year campaign to achieve this historic decision so Age UK is absolutely delighted that the government is finally setting a clear date for the abolition of this arbitrary and unfair law," said Michelle Mitchell, Age UK charity director.

"Everybody stands to win from scrapping forced retirement. People over 65 will have full employment rights for the first time. The economy will benefit from older workers' precious skills and experience and their increased buying power. Public finances will receive a boost from more people paying taxes for longer."

The government hopes the change will encourage people to work for longer, against a background of an ageing population. That could ease the strain on public finances as more people continue to pay tax, while at the same time claiming the state pension.

There is no doubt in my mind that if we are to make the most of our workforce, we must attempt to keep up with the pace set in the UK. A Discrimination Law is essential, and is required as soon as possible.

### **Law Drafting**

I am informed that there has been a draft Law in the system for some time. Members will recall that the task started as a proposal for a Race Discrimination Law, but the brief was then widened to encompass all kinds of discrimination. This has resulted in the draft of a Law which, on first enactment, would have provided a framework for what constitutes discrimination and rights in respect of claims of discrimination – but which would not have actually specified the kinds of discrimination to which it applied. This is reflected in the 2-stage approach adopted in this proposition.

The enactment of a series of Regulations under the Law to deal with different types of discrimination can be phased over time, starting with the basic issues such as race and sex, and if this proposition is accepted, age discrimination.

There is a draft Law and there are draft Regulations, but both require some work before they are in a fit state to be lodged. There are some procedural issues to resolve in the Law regarding its interaction with the Employment Law, but my understanding is that these are not particularly difficult.

### **Funding of Discrimination legislation**

A brief history of the tortuous route taken by this Discrimination Law is given here:

#### **2007 Annual Business Plan – Original funding of £500,000**

The States agreed funding of £500,000 in the 2007 Annual Business Plan as part of the Strategic Plan 2006 – 2011 funding (SP initiative 3.1.3).

Page 60 of the Annex to the 2007 ABP states: *'It is unlikely that all of the funding will be required in the first year following the introduction of the Law and it is intended that the balance of funds will be used to supplement the Prison budget in the short term, until the funding pressures are resolved.'*

### **2009 Annual Business Plan – funding diverted to the Prison Budget**

Page 41 of the Annex to the 2009 ABP states: *‘Following a decision of the Council of Ministers funds of £500,000 previously provided for the implementation of discrimination legislation will be diverted to supplement the Prison budget from 2009. Consequently, the implementation of discrimination legislation (as drafted) will require new growth funding and £250,000 was secured by an amendment to the draft Business Plan by the Council of Ministers.’*

### **2009 Annual Business Plan – New funding of £250,000**

Page 44 of the Annex to the 2009 ABP states: *‘The Council of Ministers’ amendment to the lodged draft Business Plan will reinstate part of the funding for the phased implementation of Discrimination Legislation following the Council’s decision to divert previously agreed funding to the Prison.’*

### **2010 Annual Business Plan – Removal of funding £250,000**

Page 70 of the Annex to the 2010 ABP states: *‘Due to slippage in the implementation of any discrimination legislation, funding of £250,000 has been removed from the Department’s cash limit in 2010.’*

### **2011 Annual Business Plan – New funding of £100,000 in base budget offset by CSR saving**

Funding of £100,000 was included in the Department’s 2011 base budget for the phased implementation of Discrimination Legislation. However, as the States resolved to implement Discrimination Legislation before the shortfall in States finances was known, this funding was agreed as a CSR saving proposal as the Minister did not want to bring in a piece of legislation for one year only to remove it the following year to make savings in 2012 or 2013.

### **Summary**

|             |                          |  |
|-------------|--------------------------|--|
| <b>2007</b> | + £500,000               | Prison and other funding pressures in Home Affairs (MD-HA-2007-0030)   |
| <b>2008</b> | £500,000                 | Prison and Customs and Immigration Service (MD-HA-2008-0082)   |
| <b>2009</b> | - £500,000<br>+ £250,000 | Diverted to Prison Budget<br>Service pressures within the Home Affairs Department to cover overspends (Accounting Officer Delegated Authority (MD-HA-2009-0005). |
| <b>2010</b> | - £250,000               | Due to slippage in the implementation of any discrimination legislation, funding removed from the Department’s cash limit in 2010.                               |
| <b>2011</b> | + £100,000<br>- £100,000 | Net impact – nil   |

I have chosen a mid-point value from the history of the funding proposals of £250,000 for the implementation costs. I believe that this is a reasonable approach, given that the range of types of discrimination covered and the phasing of implementation can be adjusted to the budget. The reality is that the costs involved should be regarded as an “invest to save” proposal. If we are to maximize the economic benefits from extending working age, then removal of the barriers, such as age discrimination, constitutes money well spent.

### **Financial and manpower implications**

As outlined above, Law Drafting costs are minimal. The proposal is that £250,000 is allocated for implementation in 2013. There are no manpower costs.