

STATES OF JERSEY



DISCRIMINATION LAW AND DELAY ON PENSION REFORM (P.118/2011): COMMENTS

**Presented to the States on 18th July 2011
by the Minister for Home Affairs**

STATES GREFFE

COMMENTS

The Proposition of Deputy G.P. Southern of St. Helier, P.118/2011, requests the Minister for Home Affairs 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 the registration, draft Regulations to cover grounds for discrimination on issues including race, sex and age.

There is a serious issue as to which Minister should now take responsibility for taking this Law forward. The main activities of the Home Affairs Department are in the area of public protection, and the Department has very little expertise in this area. There is a very close link between Discrimination Law and Employment Law, as is acknowledged by the proposer. The current plans are to create an Employment and Discrimination Tribunal, and the States expertise in relation to employment matters lies with the Minister for Social Security. Alternatively, the responsibility could be transferred to the Chief Minister's Department, which has more expertise in social areas and more project leaders and resources.

The remaining comments are based upon that responsibility remaining with the Minister for Home Affairs.

Whilst it is acknowledged that the Law Draftsman has already prepared a draft of the Law, the timeframes suggested by the Deputy for lodging a draft Discrimination Law are not realistic. There are a number of reasons for this.

The Chief Officer for Home Affairs, by letter dated 17th June 2011, has invited representatives from his Department, the Community Relations Trust, the Employment Tribunal, the Social Security Department and the Judicial Greffe to establish a working party in respect of the Discrimination Law. It is hoped that the working party will be able to use its collective knowledge to give some structure to taking the Law forward and will, as part of its remit, review the UK Equality Act 2010, which has recently replaced 9 separate pieces of discrimination law in the UK. This Act may well have a bearing on the way in which the Jersey law should be formulated, but will take some time to review and assimilate. The Home Affairs Department does not have the requisite expertise to bring forward such legislation without outside assistance from the bodies who have been asked to provide representatives to sit on the working party.

Following the elections in October 2011, and the establishment of a new Council of Ministers, it is probable that the Home Affairs Department will have a new Minister and/or Assistant Minister. They will need some time to familiarise themselves with the work of the Department, which has a busy and varied workload. If the new Minister is also a newly elected States member, this will potentially take longer. The new Minister will have to determine priorities in terms of the departmental legislation programme. The effect of this proposition will be to make this proposition the Department's highest legislative priority.

Two previous versions of the draft Discrimination Law have been sent out to public consultation (2006 and 2008). In 2006, 41 detailed responses were received, of which 100% were in favour of introducing a Law to provide protection to those suffering from discriminatory acts. In 2008, only 8 responses were received, which were generally of a technical nature relating to terminology used and the application of the draft Law. It was taken by the former Minister for Home Affairs that the low response rate demonstrated that the public were supportive of the draft Law. On this basis, there may not be any need for further consultation on the draft Law if the current format of the draft Law is maintained (after consideration by the working party), but it should not be ruled out at this stage. However, none of the attributes have been consulted upon, and whilst the delay whilst the Law is at Privy Council may allow the Regulations to be drafted, subject to the availability of Law Drafting time, some time would be required between the production of the draft Regulations relating to the attributes and their lodging, to allow for consultation to take place. Moreover, if, having reviewed the UK Equality Act 2010, the working party feel that legislation more akin to this would be appropriate for Jersey, it may be that further consultation would be considered necessary.

The Deputy's Proposition further requests 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).

As the Deputy states in his Proposition, the States agreed to accept as a CSR saving the £100,000 that had been included in the Department's base budget for 2011 for implementation of Discrimination legislation. To request, in isolation, that £250,000 should be now allocated per annum from 2013 onwards for this Law is unlikely to be deemed palatable whilst the States are identifying and undergoing expenditure cuts as part of the CSR process. Any decision on future funding should form part of the annual States Business Plan proposals when a view can be taken by Members in the round as to its relative priority.

The Deputy views the £250,000 per annum as an 'invest to save' proposal, and feels that economic benefits will be reaped from extending the working age and removing the barrier of age discrimination. I would question the logic of this argument, as I do not consider that the 2 issues are directly linked. There are economic benefits to be gained from employing people, but it makes no difference whether they are people who remain in work up to the age of 67, or people who are currently seeking employment.

Finally, although I remain supportive of the principle of passing this Law, the Home Affairs Department continues to face major challenges in relation to implementing its agreed share of the CSR reduction in expenditure. The problem which I have always faced is that unless the costs of the implementation of this are accepted by the Assembly as a growth bid, the consequences of the proposition would be to reduce the size of the Police Force by the number of officers which corresponds with any increased expenditure.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

The Minister was unable to approve his comments before the deadline as a consequence of the number of States meeting days in July and of his desire to discuss the matter at a formal meeting of the Council of Ministers prior to presentation.