



Committee *for*  
Employment & Social Security

# Policy Developments -

Key points for consultation  
with the States of Alderney

June 2017

# Executive Summary

The Committee *for* Employment & Social Security is taking forward a number of pieces of work which will apply differently to Alderney residents due to the different legislative and policy context on the island. It is important that we gain clarity on the States of Alderney's views on a number of points in order that policy is developed to appropriately include Alderney and the impacts of differences in legislation and context are understood by both the Committee and the States of Alderney.

An initial meeting was held on 17<sup>th</sup> May 2017 with Mr James Dent and Alderney Representative Graham McKinley, and it was requested that a document was produced outlining:

- relevant work being undertaken
- the reasons for undertaking that work
- the timescales for the work
- and what response was requested from the States of Alderney.

This document outlines these points in order to open a discussion with the States of Alderney about the way forward.

In brief, key areas which are currently under development include:

- **Longer Working Lives**, a project looking at how to support people to remain in work up to or past State Pension Age. Proposals may include legislative elements.
- The Use of Minimum Wage in current **Supplementary Benefit** Legislation.
- The **Equality and Rights Programme**, with the current key active work-stream being the Disability and Inclusion Strategy, including the development of Disability Equality Legislation which will contribute towards the extension of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) to Guernsey.

The States of Alderney are asked to provide clarity on the following points:

- Do the States of Alderney have any initial comments on the Longer Working Lives Draft Proposals regarding whether they believe the issues are similar or whether the proposals would be effective in Alderney?
- Whether the States of Alderney has an interest in developing basic Employment Legislation.
- Whether the States of Alderney would consider, as part of this, or as a future stage, introducing minimum wage legislation.
- Is the States of Alderney taking forward work to develop a Disability Strategy for Alderney?
- Whether the States of Alderney has an interest in a possible future extension of the Disability Discrimination Legislation currently under development in Guernsey, or in extending UN CRPD to Alderney.
- To what extent do the States of Alderney wish to be included in the process of the development of the Disability Discrimination Legislation – would they wish to be included with an understanding that they may extend the legislation to Alderney at a future date or do they not wish to be involved at this stage?

# Overview of work-streams and timescales

## Longer Working Lives

Longer Working Lives is a project that is looking at how to support people to continue to work up to or past State Pension Age. This will become increasingly important as the islands' populations age.

### Why is Longer Working Lives strategically important?

We are expecting a higher proportion of older people to be in our population in future. Longer Working Lives is important for a number of reasons. Firstly, maintaining the workforce – we are expecting there to be less people in the population in future who are between the ages of 16-64. Consequently, in order to maintain the workforce at its current levels (without significant immigration) we would need to encourage higher labour market participation rates for over 50s. Secondly, unless we maintain the workforce we will see a negative impact on our revenue income as our current tax system is heavily oriented towards income tax. Thirdly, the States of Guernsey have agreed to increase the pension age at a rate of 2 months per year from 2020 to reach the age of 70 by 2049. This measure was to improve the sustainability of the Guernsey Insurance Fund. If people between the ages of 65 and 70 claim unemployment or incapacity benefits rather than working, then increasing the pension age will not increase the sustainability of the Fund as individuals would receive financial support by other routes. Therefore, it is important that people are able to work if they wish to. Fourthly, if people are living longer, working for longer will be important in ensuring that they have saved sufficient funds to provide for a long retirement. Lastly, for some people, work can help to maintain physical and mental activity levels and social contact, which supports their health and wellbeing.

In terms of timescale, Longer Working Lives is due to return to the States of Guernsey for debate in December 2017. This Policy Letter will agree the workstreams that will be taken forward, but the work to develop and action these workstreams will continue after this date.

### Progress with the project

The Committee *for* Employment & Social Security have released a set of Draft Proposals regarding Longer Working Lives (available for download at [www.gov.gg/longerworkinglives](http://www.gov.gg/longerworkinglives)). These proposals seek to address what we believe are the key barriers to working for longer which people are facing. It is recognized in this document:

“...that the population in Alderney is also ageing. Alderney residents face similar issues to Guernsey residents around working for longer, but the different context in terms of legislation and service provision may mean that some of the actions outlined in this document are more relevant to Guernsey residents. We held a public meeting in Alderney in November 2016 and noted the views that were raised. We are currently engaging in initial discussions with the States of Alderney about the project but will return to Alderney to discuss further with residents in due course.”

#### Point for consideration

**Do the States of Alderney have any initial comments on the Longer Working Lives Draft Proposals regarding whether they believe the issues are similar or whether the proposals would be effective in Alderney?**

#### Aspects related to Employment Legislation

Whilst we believe some of the proposals apply equally to Alderney, two of the proposals are based on the legislative background of Guernsey, namely the consideration of the introduction of age discrimination legislation in response to public concern in Guernsey about the use of retirement ages drafted into contracts to end employment prematurely and the potential introduction of a right to request flexible working in order to support carers to balance family and work commitments. Flexible working includes a wide range of working arrangements, including working from home, adjusted hours, part-time working, job sharing, and more. This right would mean that any request for flexible working would need to be taken seriously and considered by employers, but could be refused if there was a business reason not to provide flexible working arrangements.

Neither of these provisions could be straightforwardly applied to Alderney due to the fact that there is no established foundation of employment legislation in Alderney. This raises questions about the extent to which employees in Alderney can be supported to remain in work in the absence of a foundation of basic employment legislation (this issue is returned to later in this paper). If this lack of protection disadvantages Alderney residents in their ability to stay in work until a higher State Pension Age, this could translate into increased costs in unemployment and incapacity benefits which could lead to ongoing, increased benefit expenditure. The question of Employment Legislation is returned to below.

## Supplementary Benefit – Minimum Wage

Section 1(b)(ii) of the Supplementary Benefit (Guernsey) Law, 1971 (The Law), which governs entitlement to supplementary benefit, states that a person, whose resources are insufficient to meet their needs, is eligible to claim supplementary benefit if they are “acting in compliance with work requirements relating to them”.

The Law defines “work requirements” as becoming or continuing to be in “full-time remunerative work”, which has the meaning given by the Supplementary Benefit (Guernsey) Regulations, 2014 (The Regulations). To be engaged in full-time remunerative work, according to the Regulations, a person must work for a minimum of 35 hours per week, remunerated at a rate that is at least equal to the minimum wage.

As minimum wage legislation does not apply in Alderney, this means that an Alderney resident remunerated at a rate that is less than minimum wage, would not be acting in compliance with the work requirements set out in the legislation. Therefore, they would not be entitled to claim supplementary benefit, unless they were exempt from the condition which requires them to be in full-time remunerative work.

An exception has been made for the case that has arisen and it is anticipated that the number of individuals who are affected will be low<sup>1</sup>. However, there is a concern that the principle is problematic. If Alderney residents were required to meet the same income requirements as Guernsey residents they may have to work more hours to do so – this does not seem fair. On the other hand one of the reasons for introducing the minimum wage in Guernsey was to avoid the government subsidising businesses who paid wages that were insufficient to cover a person’s living costs. The lack of minimum wage in Alderney could mean that the States of Guernsey is effectively subsidising Alderney businesses who pay low wages by topping up their living costs via Supplementary Benefit. This principle is also of some concern, and it would be more straightforward to treat islanders equally if there were also a minimum wage in Alderney.

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<sup>1</sup> We do not currently have central data on the number of hours people work to determine their hourly rate. At the time the research was undertaken 10 people were receiving wage top-ups from Supplementary Benefit in Alderney but we do not know what their rate of pay was.

# Equality & Rights Programme – Disability & Inclusion Strategy and Disability Discrimination Legislation

The Equality & Rights Programme is the overarching programme of work looking at equality, inclusion and human rights which incorporates work on discrimination legislation and work required to extend UN Conventions. Since the restructuring of government in 2016, this programme now falls within the mandate of the Committee *for* Employment & Social Security.

The primary piece of work being taken forward within this Programme at present is the Disability and Inclusion Strategy, which contains a number of workstreams. These include the development of Disability Discrimination Legislation with a view to then seeking the extension of the UN Convention on the Rights of People with Disabilities (UN CRPD) to Guernsey and the development of an Equality and Rights Organisation. It is anticipated that the policy proposals for this legislation will be drafted and returned to the States within this political term (i.e. by 2020).

## Why is the Equality & Rights Programme important?

The Equality & Rights Programme is important because it is about embodying the communities fundamental values that people are treated fairly and equally and are socially included.

It is important for the reputation of the islands to participate in international conventions and to be seen to support standards of equality and inclusion which are internationally recognized.

It is important for the islands socially because the government adoption of legislation demonstrates leadership in communicating messages about what standards of behavior are acceptable in our society, and in order to challenge prejudice within the community. It is important for maintaining quality of life and ensuring that our islands are good places to live and offer a good quality of life to all our residents.

It is important for the islands economically in terms of our ability to attract and retain the workforce that we need and ensuring that Guernsey is an attractive place to live. It is important to ensure that the skills and aptitudes of our workforce are used optimally and that discrimination doesn't lead to people's skills being written off due to assumptions, stereotypes or lack of willingness to be open-minded about what a person could contribute.

## Why is the Disability Discrimination Legislation important?

As well as the above general reasons for supporting all discrimination law developments, Disability Discrimination Legislation is particularly important in the context of an ageing population. There are higher levels of disability amongst the older population (e.g. mobility impairments, hearing impairments) which means that as our population gets older a higher proportion of the population could benefit from disability inclusion and accessibility. Ensuring that people are included and able to remain active and participate in the social life of the island is key to ensuring their wellbeing and preventing ill health and loneliness. Without accessibility, people may need more support (which often comes at a cost to government) in order to get by. For example, if a person with mobility issues is able to get to and around the local shop to buy food because the environment is designed without steps, that person does not then need somebody else to assist them with their shopping.

The legislation is likely to be based on the idea of 'reasonable adjustment'. The Disability and Inclusion Strategy agreed by the States of Guernsey in 2013 explains this concept as follows:

*Any disability equality legislation would include some form of test for whether or not an adjustment was reasonable, probably not dissimilar to the tests in UK or Canadian anti-discrimination law. This means that local courts, tribunal, arbitration and advice would need to take into account factors such as the organisation's financial resources, the practicality of the change and, most importantly, whether the change would actually resolve the problem. Factors that might be taken into account under any new legislation in determining whether an adjustment is reasonable might include:*

- *whether taking any particular steps would be effective in preventing the substantial disadvantage;*
- *the practicability of the step including inter-changeability of workforce and of facilities;*
- *the financial and other costs of making the adjustment;*
- *the extent of any disruption caused including disruption of a collective agreement or disruption of services to the public;*
- *the extent of the employer's financial or other resources;*
- *the availability to the employer of financial or other assistance to help make an adjustment;*
- *the type and size of the employer;*
- *morale of other employees;*
- *safety;*
- *interference in the operation of the employer's business; and*
- *overall economic climate.*

*In other words, the question of what is "reasonable" is highly dependent on the circumstances of the individual case. In fact, it is mostly dependent on the circumstances of the employer or business concerned – can this employer, or that*

*business, make or afford the adjustment? If not, it is unlikely to be deemed reasonable.*

It is understood that it would be difficult for the employment aspect of the legislation to be extended to Alderney without a foundation of basic employment legislation existing in Alderney (discussed below). The legislation being developed will most likely build on existing legislation in Guernsey which covers contracts of employment, concepts of fair and unfair dismissal and so on. It is possible that the States of Alderney may be interested in extending Disability Discrimination Legislation at a future date and may wish to be included in its development with that understanding.

The legislation being developed is also intended to protect people from discrimination when they are trying to access goods or services. It is possible this element (goods and services) could be extended to Alderney within the existing legislative context without the need for a foundation of employment legislation.

#### Previous consultation with Alderney

In 2013 leading up to the debate of the Disability & Inclusion Strategy in the States of Guernsey, there had been discussion with the States of Alderney about their interest in the Disability Strategy and the Disability Discrimination Legislation. It was noted ([Billet XXII, 2013](#)) that:

Para 125. The States of Alderney Policy and Finance Committee would not wish to see the Strategy extended to Alderney at this time and the proposals do not therefore cover that Island. However, it should be noted that for transferred services under the Alderney (Application of Legislation) Law, 1948, as amended, where Guernsey has responsibility for a service, any decisions made relating to the Guernsey service will also apply to Alderney.

But also that:

Para 9. It should be noted that although this Strategy refers to Guernsey, including Herm and Jethou, the Policy Council would be pleased to assist Alderney and / or Sark in adopting similar strategies if desired by those Islands' governments.

The Social Policy Group minutes from August 2013 and the Hansard from the November 2013 debate suggest that there had been a conversation within the States of Alderney at that time about whether there should be an Alderney Disability Strategy. Alderney Representative Jean is recorded as having said:

In Alderney, as Chairman of the ESC Committee, we are looking forward to making progress with our own programme of improvements for those less able than ourselves. I realise we have never given enough time to this important area, which has long suffered from neglect. Now is the time to put that right.<sup>2</sup>

Some years have passed. The Committee *for* Employment & Social Security would be keen to confirm whether or not such a programme of work has been, or would be progressed in the near future in Alderney and whether the States of Alderney's feelings on Disability Discrimination Legislation remain the same (that they do not wish to work towards having it extended or be included in its development at this time).

Point for consideration

**Is the States of Alderney taking forward work to develop a Disability Strategy for Alderney?**

## Employment Legislation

All of the above three workstreams will mean that the States of Guernsey will need to compensate for the different legislative environment in Alderney. There are some concerns that treating people differently in Alderney (whether through lower levels of accessibility leading to higher support requirements, increased Supplementary Benefit payments due to low wages, or lack of protection for employees to stay in work leading to the risk of more people leaving the labour market earlier), could increase costs for the States of Guernsey.

It is understood that in the past the business community in Alderney has not looked favorably on the idea of employment legislation being introduced, and that Alderney's economic environment is significantly different to Guernsey's. It is also understood that it would be difficult for the States of Alderney to introduce discrimination legislation or a minimum wage without introducing more basic employment legislation. However, it would be helpful if the States of Alderney could indicate whether they would consider looking into the introduction of basic employment legislation as a starting point, on which more could be built at a later stage if the States of Alderney did wish to introduce a minimum wage or extend some of Guernsey's Discrimination or other legislation to Alderney.

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<sup>2</sup> States of Guernsey (2013) Hansard – 27<sup>th</sup> November, 2425-2428; <https://gov.gg/article/150421/States-Meeting-on-27th-November-2013-Billet-XXII>

Whilst there may be some concerns about introducing legislation due to the cost, it could also bring benefits to the island's employees, the island's reputation and the attractiveness of the island as a place to live and work.

There might be a number of different ways to approach developing Employment Legislation in Alderney. If a staged approach were taken, the first stage towards enabling the development of further employment legislation in Alderney would most likely be considering legal rights to a written statement of employment and pay slips which would be equivalent to the rights covered in [The Conditions of Employment \(Guernsey\) Law, 1985](#).

It should be noted, as the States of Alderney will be aware from other projects, that the speed of progress on any decision to introduce legislation would depend on the availability of drafting resource.

#### Point for consideration

- **Whether the States of Alderney has an interest in developing basic Employment Legislation.**
- **Whether the States of Alderney would consider, as part of this, or as a future stage, introducing minimum wage legislation.**
- **Whether the States of Alderney has an interest in a possible future extension of the Disability Discrimination Legislation currently under development in Guernsey, or in extending UN CRPD to Alderney.**
- **To what extent do the States of Alderney wish to be included in the process of the development of the Disability Discrimination Legislation – would they wish to be included with an understanding that they may extend the legislation to Alderney at a future date or do they not wish to be involved at this stage?**

This paper was drafted in consultation with:

- Head of Operations, Office *of the* Committee *for* Employment & Social Security
- Senior Employment Relations Officer, Employment Relations Service
- Manager – Policy & Legislation, Office *of the* Committee *for* Employment & Social Security
- Policy & Legislation Officer, Office *of the* Committee *for* Employment & Social Security
- Director of Legislative Drafting, St James' Chambers