

Summary of Responses

SUMMARY OF CONSULTATION DETAILS

The Home Affairs Department published a second consultation paper on the Discrimination (Jersey) Law 200- (“DJL”) between February 1st and March 14th 2008.

During the 2006 consultation 41 detailed responses were received. At that time the respondents had been 100% in favour of introducing a law to provide protection to those suffering from discriminatory acts although a number of points were raised.

This second consultation paper was designed to obtain feedback on the revised DJL which had been modified after consideration of comments received in the first round of consultation. Clarification or adjustment to some sections of the DJL had been sought in the first round and changes to reflect these requests had been made. Some further powers had also been granted in the revised DJL to the Home Affairs Minister and the Employment Tribunal (when dealing with discrimination claims) and the Discrimination Panel¹.

OVERVIEW OF CONSULTATION RESPONSES

The consultation paper was presented on the www.gov.je Public Consultations website and provided to the Community Relations Trust and more than 50 individuals who had expressed an interest in the subject matter. (The Community Relations Trust organised their own conference on discrimination issues in September 2007 to heighten awareness of discrimination issues).

Despite such wide circulation only 8 responses were received to this round of consultation including some from law firms and one from the Jersey Advisory and Conciliation Service. However, although the response rate is low the Home Affairs Minister believes it demonstrates support for the proposed draft law.

On this occasion several comments have been of a technical nature affecting the legal drafting process. Some have related to the terminology used and to the application of

¹ The changes that were made to the first draft of the law were referred to in the second consultation paper.

the DJL. Others have related to the roles and working of the Employment Tribunal and Discrimination Panel.

MINISTER / DEPARTMENT'S RESPONSE TO CONSULTATION

The Home Affairs Minister is grateful to those who have taken the time to send in their comments on the revised version of the DJL. Once again the comments will be considered and it is likely that some further revisions to the DJL will result. Some of the comments relate to matters of policy rather than clarity or drafting style and the Minister will make a decision on these before lodging the DJL for debate in the States. However, as noted above, it is felt that the DJL has the support of the community and the Home Affairs Minister wants to progress it as soon as possible.

SUMMARY OF RESPONSES	
Issues relating to definitions:	<p>Employment</p> <p>Contract Worker</p> <p>Territorial scope: What does an “act done in Jersey” constitute; acts done should not be limited to those done in Jersey; the addition of the word “requires” in Article 4 was unnecessary</p> <p>Definition of “services” vis-a vis “contract for services” to be clarified</p>
Issues relating to application of the DJL:	<p>Would the Therapeutic work scheme fall under the DJL?</p> <p>Some questions were asked in connection with the effect of the application of the DJL. (Note: It is important to remember that the provisions of the DJL only apply if someone has been discriminated against (treated less favourably) on the basis of a qualifying attribute under the law eg race; sex ; disability; age (once these attributes are introduced))</p> <p>What would be “reasonably practicable” under Article 32?</p> <p>What is the interaction of the award for compensation for hurt and distress under the DJL and any award made by the Employment Tribunal eg for unfair dismissal ?</p>

Issues of policy:	<p>The amount of compensation that can be awarded</p> <p>The nature of the burden of proof before a claim can be proven</p> <p>Time needed for training and the cost to and effect on business of the DJL</p> <p>Article 3: proposals that a “like for like” comparator test should be used and that the adoption of the concept of “associative discrimination” needed further consultation were made.</p> <p>Enforcement powers of the Employment Tribunal / Discrimination Panel were commented on</p> <p>Publication of codes of practice - extent of their use in proceedings to be clarified</p>
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