

Speech notes – Amendment 8

- I don't question the right and the integrity of the proposer and seconder to lay this amendment, but I do ask myself whether it is perhaps based on some misunderstandings.
- When he opened debate on this yesterday, Deputy Blin said something along the lines of that we are not adopting well-established legislation from UK or Jersey, and when he was interviewed on the BBC a few days ago he said, "You have to take into consideration the fact that some of the changes we're undertaking here are kind of beyond other countries or islands."
- This is what I think is the first misunderstanding: our proposed legislation does not go beyond other countries' – there are equivalent provisions in all comparable jurisdictions, including the UK, Jersey and the Isle of Man. These provisions are absolutely standard: they are well-established and they are tried and tested – and the sky didn't fall in for small businesses in those places when the legislation was introduced. To be clear, and to correct the impression Deputy De Lisle might have given a little earlier, the UK's Equality Act doesn't exempt and never has exempted smaller businesses or phased them in after larger employers. The policy in the Disability Discrimination Act that Deputy Blin referred to in his opening speech yesterday that exempted businesses of less than 20 employees was scrapped nine years after its introduction as it proved unnecessary and discriminatory and it was clear it would never achieve equality of opportunity. The DDA was replaced by the Equality Act in 2010 – and that applies (and always has) to all businesses, with the same safeguard as is embedded in ours, that we do not expect the same kind of adjustments from small businesses with few resources as we do from a large business with more resources, as explained by Deputy Falla.
- The proposer and seconder's main concern seems primarily to be the impact on small businesses of reasonable adjustments and how reasonableness be objectively determined. The answer is simply by assessing whether the adjustment would be effective, whether it would be practical, and whether it would be affordable, for example. If it's not practical, or if it's not affordable, or if it's in any way a disproportionate burden, then it wouldn't be considered reasonable.
- I'm just going to share very quickly some real-life examples of reasonable adjustments given to us by local people on Tuesday at the GDA meeting so we're clear about what is encompassed in that term: for an office worker with mobility issues, moving a desk five feet so that she didn't have to weave through other desks to reach it; in a barber's for a customer with a range of disabilities including autism, offering to turn the music down and not engage in small talk; and for a wheelchair user, a rubber-tipped pointer (costing 25p) that enabled her to reach all of the lift buttons.
- Is it really reasonable to exempt 65% of our businesses from the duty to make such reasonable adjustments?

- Deputy Blin in his opening speech argued that this 65% figure skewed the picture because it represents a lower proportion of the total workforce, but it's important to remember that this doesn't just relate to the workforce – for services it relates to service users as well, so it actually impacts anyone who might want or need to access those services being provided by smaller businesses.
- However, if the proposer and seconders' concern relates primarily to the more costly physical alterations that could be reasonable adjustments, notwithstanding the aforementioned safeguards around reasonableness, there is already baked into this legislation a five-year delay on the requirement to make them. Also, it's worth noting that that is on top of the effective year's delay from now before any employer is under any kind of requirement under this legislation – a reasonable adjustment that the **Committee** made to accommodate feedback from employer groups to give them more time to prepare.
- In both his BBC interview and his opening speech, Deputy Blin has alluded to the idea that this exemption need not be permanent and that really what he is seeking is a delay of perhaps a couple of years, so I have two questions for him on this issue that I ask him to address when he replies to debate: first of all, **if what he hoped to achieve through his amendment was a delay rather than a permanent exemption then why didn't he draft the amendment to that effect**, and secondly, **if he is satisfied with a delay, does he really believe that a five-year delay to the most material changes – on top of the delay till October next year this legislation coming into effect in the first place – is insufficient?** If so, how much longer a delay does he think there should be? Doesn't he think people with disabilities have been waiting long enough already?
- There is one other important question that I hope he can answer in debate, and it is this: **why does he seek, through his amendment, to exempt small employers so far as relating to the protected ground of carer status?** I just can't understand the rationale at all. Under the legislation as drafted, no employer is under any specific duty to make reasonable adjustments for carers – the legislation simply gives them more protection to do so. So why include a clause in this amendment that removes them from the obligation to not directly discriminate, or indirectly discriminate without good reason, or harass a person, on the grounds of carer status. I'm at a loss so I'd like to understand the reasoning, and I'm sure the estimated 6000 carers in the island are also keen to hear the explanation.
- I have now lost count of the number of members making arguments in favour of weakening this legislation on grounds of our economic competitiveness. I said yesterday that I thought that was an odd argument to make, and we've heard some excellent reasons such as those put forward very eloquently by Deputy Bury as to why this legislation in fact strengthens our position with respect to attracting the best young talent to the island.

- Nobody questions the need for high standards when it comes to issues like Moneyval or GDPR, so why would we not look at this kind of legislation through the same lens?
- Now, one of the next items of business we're due to debate in this States meeting is an important policy letter being brought forward by P&R on future trade agreements.
- I'm familiar, through my E&I role, of the need to comply with some baseline standards that relate to various different areas, so I asked our **Director of International Relations and Constitutional Affairs** for a steer on Amendment 8 could affect our position in this important respect. He replied as follows:
- The States are about to be asked to join CPTPP (the Trans-Pacific Partnership) which has the following labour standard:
- **"Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights** as stated in the International Labour Organisation Declaration:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) the elimination of all forms of forced or compulsory labour;
 - (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and
 - **(d) the elimination of discrimination in respect of employment and occupation."**
- With regard to the line that having lower standards helps employment (from the regulator) which is more a general point than Amendment 8 - [CPTPP](#) says this:
- "The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws"
- What message does it send if we carve out small business from this? This is an agreement that covers goods and services and trade with a significant proportion of the world's high value wealth generating economies.
- Further, the agreement with [Japan](#) (which we are in for goods could extend to services and is a valued trade partner already) would require the same:
- "The Parties reaffirm their obligations deriving from the International Labour Organisation (hereinafter referred to as "ILO") membership. The Parties further reaffirm their respective commitments with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Accordingly, the Parties shall respect, promote and realise in their laws, regulations and practices the internationally recognised principles concerning the fundamental rights at work, which are: (a) the freedom of association and

the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.”

- Plus it requires parties not to lower standards to seek competitive advantage, and “that each Party shall strive to ensure that its laws, regulations and related policies provide high levels of environmental and labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection.”
- Any trade agreement will have a similar provision. What does this suggest? If we want the protection from economic discrimination in the global economy, we need to maintain a high standard of protection in respect of employment and occupation in the domestic economy. Amendment 8 would undermine that in these important areas of protection. This is an area we need for the agreements, and we are playing catch up with the rest of developed economies.
- The UN Convention on People with Disabilities also requires equal protection, as set out in [Article 5](#): “In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”
- And finally, we should expect back tracking on the previously agreed extent of protection from discrimination to be questioned by the UN and the International Labour Organisation as progress on the development of this ordinance has been referenced by the States of Guernsey in numerous periodic reports over recent years.
- I remind members that this is not my interpretation: this is the advice I have been given by the Director of International Relations and Constitutional Affairs.
- If for no other reason – and there are very many other good reasons – I ask that every member who cares about our economic competitiveness in this very real respect of trade agreements to reject Amendment 8, and that P&R lead the way in that respect.
- Thank you.