

OPEN AGENDA

Copy No:

No: 36/2021

Memorandum for Executive Council

SUBJECT

Employment Rights (Amendment) Bill, 2021 and Employment Rights (Labour Regulating Authority) (Amendment) Regulations 2021

Memorandum by the Chairman of the Education and Employment Committee

ADVICE SOUGHT

1. Executive Council is asked to consider and advise whether:
 - a) The Employment Rights (Amendment) Bill, 2021 should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council. A copy of the Bill is at Annex A; and
 - b) The Employment Rights (Labour Regulating Authority) (Amendment) Regulations, 2021 be approved for publication upon the commencement of the Ordinance. A copy of the Regulations are at Annex B.

BACKGROUND & CONSIDERATIONS

2. The Labour Regulatory Authority (LRA) is established by the Employment Rights Ordinance 2010. The Ordinance gives the LRA the following statutory responsibilities:
 - (a) to promote and protect the rights of employees granted under this Ordinance;
 - (b) to advise the Governor in Council and any relevant Council Committee on labour protection issues;
 - (c) to investigate and determine claims made by employees under this Ordinance; and
 - (d) to prepare and publish guidelines on best practice and codes of practice in employment protection for employers, employees and workers.
3. Last year the Chairman of the LRA wrote to the Education and Employment Committee (EEC) requesting changes to the Employment Rights Ordinance and associated Regulations. This included the following:
 - i. That the statutory responsibility to protect and promote employees' rights is incompatible with the

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LRA's statutory responsibility to determine claims made under the Ordinance. This responsibility should be removed from the LRA.

- ii. That the statutory responsibility to prepare and publish guidelines needs some method of political endorsement in order for this responsibility not to be in conflict with the LRA's statutory responsibility to determine claims under the Ordinance.
 - iii. That there should be provisions for a Clerk to the LRA.
 - iv. That there should be a Deputy Chairman, who is a Justice of the Peace, who can exercise the functions of the Chairman (who is always the Chief Magistrate) when the Chairman is absent or unable to carry out the functions.
 - v. That amendments are made so that the Chairman is able to decide on procedural and pre determination matters alone, without the two other members of the LRA.
4. Following this request EEC met with the Chairman and the Attorney General (invited to attend by EEC.)
 5. The Attorney General's Chambers was instructed to draft the relevant Amendment Bill and Regulations. Instructions were given that the promotion responsibility of the LRA should be moved to the Employment Rights Committee (ERC).
 6. In the attached Bill the promotion responsibility has been transferred to the ERC. The protection responsibility has been removed from the LRA but not transferred. It is not something that can correctly sit with either.
 7. An amendment has also been made so that the LRA must consult with Executive Council before preparing and publishing guidelines.
 8. The other requested amendments have been made in the attached Bill and Regulations.
 9. EEC approved the Bill and Regulations at a meeting on 2nd June 2021.
 10. There are no new financial implications directly from the Bill or Regulations.

FINANCIAL IMPLICATIONS

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ECONOMIC IMPLICATIONS	11. There are no new economic implications directly from the Bill or Regulations.
CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES	12. N.A
PUBLIC/SOCIAL IMPACT	13. Expected to be positive as will increase the efficiency of the LRA and lead to promotion of employment rights by the ERC.
ENVIRONMENTAL IMPACT	14. N/A.
PREVIOUS CONSULTATION/ COMMITTEE INPUT	15. EEC approved the Bill and Regulations on 2 nd June 2021. The Bill and Regulations address technical matters for which public consultation is not necessary.
PUBLIC REACTION	16. Expected to be positive as will increase the efficiency of the LRA and lead to promotion of employment rights by the ERC.
PUBLICITY	17. Executive Council's decision will be covered in the media briefing following the meeting. Once approved, the Bill and Regulations will be published on the SHG website.
SUPPORT TO STRATEGIC OBJECTIVES	18. N/A

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LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS

19. N/A

IMPLEMENTATION OF POLICY/ LEGISLATION

20. Following enactment the LRA will implement the legislative changes relevant to them. The ERC will need to consider how they will move forward the new responsibility of promotion.

OPEN/CLOSED AGENDA ITEM

21. This paper is recommended for the Open Session.

CRB

Central Support
Service

9th June 2021

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