

Discrimination legislation: draft proposals

Frequently Asked Questions

People who might experience discrimination

Last updated: July 2019

This leaflet has been created in order to answer some of the questions that have been asked to date regarding the discrimination legislation draft proposals.

More information, as well as an opportunity to give your views on the draft proposals, is available online at: www.gov.gg/discriminationconsultation.

Question 1: In what contexts would discrimination be unlawful?

Answer 1: The proposals say people should not be discriminated against when they are:

- a student
- at work
- using an employment agency, as a business partner, in a trade union or professional body, or applying for or holding an office (such as being a company director or sitting on a Tribunal)
- applying for a job
- buying, leasing or renting property – both commercial and residential
- accessing goods or services - for example, when shopping, at the bank, at the pub, in the hospital, when ordering a taxi, or eating at a restaurant.
- joining or being a member of a club or association

The proposals do not cover how people are treated by strangers in the street or by family members or friends.

Question 2: Who will have rights in the legislation?

Answer 2: It will mean that the person that you work for, or the person who runs the service you use, should not discriminate against you:

- because of your age
- because you have children or you care for someone with a disability
- because you are disabled
- because of your marital status
- because you are pregnant, breast-feeding, or on maternity or adoption leave
- because of your race – which means your skin colour, or descent, or your nationality, or your national or ethnic origin, including because you are from Guernsey (or are not from Guernsey)
- because of your religion – which includes not having a religion
- because you are a man or a woman
- because of your sexual orientation
- because you have changed or intend to change your gender

Question 3: Do the proposals include children and young people?

Answer 3: Yes. Children and young people can register a complaint (or have one registered on their behalf) if they are discriminated against on the basis of carer status, disability, marital status, pregnancy or maternity status, race, religious belief, sex, sexual orientation or trans status.

With regards **age** discrimination (i.e. if a child or young person is treated differently because of how old they are) the Committee *for* Employment & Social Security is proposing that children should be protected from discrimination on the basis of age in the following circumstances:

- in education, people can register age discrimination complaints with respect to further and higher education institutions only (i.e. not schools or pre-schools or nurseries)
- in employment, people can register age discrimination complaints when they are at or above school leaving age (currently 16)
- in the provision of goods and services, accommodation and in the membership of clubs and associations, people will need to be 18 or over to register age discrimination complaints.

There are many circumstances in which children and young people are treated differently on the basis of age in the provision of goods and services and education, for good reasons – for example, due to their developmental needs.

This is an area which the Committee is asking specific questions on within their consultation. This is available at:

www.gov.gg/discriminationconsultation.

Question 4: What is discrimination?

Answer 4: The proposals set out five different kinds of discrimination.

Direct discrimination is treating someone less favourably than another person (or people) in a similar situation or circumstances. The different treatment must be directly related to one of the ten 'grounds of protection' listed above for it to be unlawful. For example, refusing to employ a person because the employer doesn't like people of a particular nationality.

Discrimination by association is like direct discrimination but it is when someone is treated less favourably than another person (or people) in a similar situation or circumstances because of the characteristic of someone they are associated with – they might not have the characteristic themselves.

Indirect discrimination is putting rules or arrangements in place that apply to everyone, but that disadvantage a person or group of people who have a protected characteristic. It can be lawful to have specific rules or arrangements in place which lead to a disadvantage, as long as they can be 'objectively justified'. For example, a job advert says that people need to be over a certain height to get the job. This requirement puts women at a disadvantage because they are shorter on average. If this requirement were challenged then the employer would need to show that it was 'objectively justified'. This means the employer would be asked what the aim of the height requirement was, and if there was another way of doing things that would meet this aim that would not put women at a disadvantage. If this really was the best way to do things, the employer could keep doing it.

Discrimination arising from disability is when a person is treated unfavourably because of something arising from their disability. This might be, for example, that they are treated less favourably because of a change in behaviour due to a disability, or medication taken associated with a disability; or it might be that they are treated less favourably because they have an assistance animal. An employer or service provider can treat a person less favourably in relation to something arising from their disability if this can be objectively justified (as explained above for indirect discrimination above). They will also not be considered to have discriminated if they could not reasonably be expected to know that the person was disabled.

Denial of an appropriate adjustment is a form of discrimination.

Question 5: What is an appropriate adjustment?

Answer 5: An appropriate adjustment is a modification or adjustment required by a disabled person to give them the same opportunities as others and to be fully included in society. For example, if a travel agent provided all their information about holidays in very small writing a person with a visual impairment might need this in a different format so that they could understand it. This is not special treatment, this is intended to allow people the same opportunities as everyone else.

The proposals say that if a disabled person needs an appropriate adjustment and their employer or service provider fails to make that adjustment for them then this is discrimination unless it would be a disproportionate burden for the employer or service provider to make the adjustment. Something is more likely to be a disproportionate burden if the adjustment needed is very expensive or difficult to provide or if the employer or service provider is small and does not have the resources available to make the change.

Question 6: What is accessibility?

Answer 6: Accessibility is when people think proactively about designing a service or space so that it includes as many people as possible, and so that disabled people have the same access as everyone else.

Question 7: What is an anticipatory accessibility duty?

Answer 7: We intend to propose that the legislation will include an **anticipatory accessibility duty** for education, goods or service providers (including the public sector). This would not apply to employers and landlords/property controllers – they would only have a duty to respond to requests for appropriate adjustments as they arise. It would also not apply to clubs and associations with regard to membership but would apply if the clubs or associations were providing goods or services to the general public.

The proposed anticipatory access duty would require an education provider or goods or services provider to consider common access needs in advance. This can be done by:

- carrying out an access audit;
- developing an appropriate and proportionate Accessibility Action Plan; and
- taking steps to implement the plan.

This would mean that, in future, all schools, shops, public services and other people who provide education or goods and services should have thought about including disabled people in advance, and should have a plan about how they are going to make their service more accessible to disabled people. The proposals say that they must have a plan two years after the legislation is introduced and start implementing actions which are not to do with physical alterations to buildings. The proposals say they would need to start implementing actions related to physical alterations to buildings ten years after the legislation is introduced. Our questionnaire asks people what they think about this.

Further information on the anticipatory accessibility duty is available in the technical draft proposals document, and the FAQs for employers and service providers: both of which are available at:

www.gov.gg/discriminationconsultation

Question 8: What is harassment?

Answer 8: Harassment is any form of unwanted behaviour linked to any of the ten grounds of protection that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

Under these proposals, your employer, service provider, education provider or accommodation provider should make sure that they do not harass you, that your colleagues do not harass you and that customers, clients or other service users or students do not harass you. If they take reasonable steps to try to prevent harassment from happening and if they respond appropriately if it does happen, they might not be liable. If they do not try to prevent harassment from happening, or do not respond appropriately when it happens, you may be able to make a complaint under the proposed new legislation.

Question 9: What is victimisation?

Answer 9: Victimisation is treating someone unfairly because they've made a complaint about discrimination or harassment, because they intend to make a complaint, or because they've helped someone else who has made a complaint. The proposals say that if someone treats you unfairly in this way then you can complain on this basis as well as complaining that you have been discriminated against.

Question 10: When would someone be allowed to make decisions or base actions on the protected grounds?

Answer 10: There are some situations when it is lawful for an employer or service provider to make a decision or base an action on someone's characteristics - their age or sex, for example. These include:

- treating someone differently to give them an appropriate adjustment. This is not discrimination against people who don't need that adjustment.
- treating someone differently as part of a 'positive action' scheme or measure where the aim is to address inequality experienced by people from a particular group. This is not discrimination against people who do not qualify for the scheme because they don't have that characteristic. For example, offering guaranteed interviews for disabled applicants that meet the key job criteria because disabled people are under-represented at work would not be discrimination against non-disabled applicants. The proposals would not go as far as to allow employers to appoint someone to a role just because they have a particular characteristic if someone else is more qualified.
- if indirect discrimination is objectively justified (see question 4 above).
- someone may be directly discriminated against on the grounds of **age** if it can be objectively justified.
- objective justification is also permitted in cases of discrimination arising from disability (see question 4 for a brief explanation of the different types of discrimination or the technical draft proposals for a more in-depth discussion).
- if an appropriate adjustment would be a disproportionate burden to provide, an employer or service provider would not have to provide it.
- if a person cannot do the essential functions of a particular job (with an appropriate adjustment, if applicable) an employer does not have to hire or retain them.
- if there is a very good reason (a 'genuine and determining occupational requirement') why someone with a particular characteristic needs to do that job and this can be justified (for example, hiring an actor that looks like the character they are playing).
- if the different treatment is covered by an 'exception' in the legislation. The proposals contain a list of exceptions. These include, for example, allowing older people, families and disabled people to have concessionary fares or tickets; requiring people to have an

employment permit to work in Guernsey, and other things. You can find the full list in our detailed proposals at:
www.gov.gg/discriminationconsultation.

Question 11: What does it mean to have a right?

Answer 11: It means that it is unlawful for people to discriminate against you; and if they do, you can make a complaint, and if that complaint is not resolved satisfactorily, you can have your case heard by a tribunal: see Question 13.

Question 12: Where could I go for help if I thought someone had discriminated against me?

Answer 12: We are proposing that an advice service is set up that could help you if you feel you have been discriminated against. Our questionnaire at www.gov.gg/discriminationconsultation asks who you would be most comfortable getting advice from.

However, you might also want to talk to someone in the organisation it happened in first to see if they can help you. If you are discriminated against at work a manager or HR officer might be able to help you. If you are discriminated against in education, as a consumer or service user, when buying or renting property or when joining or being a member of a club or association you could raise this with the person in charge to see if they can help.

You could also contact a lawyer for advice if you wanted to; you would need to pay for this (unless this was covered by your insurance or you were eligible for some legal advice from legal aid).

The police would not usually be able to help you with a discrimination complaint. They might be able to help if someone is treating you badly at home or elsewhere, particularly if this counted as domestic abuse or harassment under criminal legislation.

Question 13: How do I make a complaint?

Answer 13: You would be able to register a formal complaint with the Secretary to the Employment & Discrimination Tribunal. You would be offered conciliation. This is where someone talks to both parties to see if a mutually acceptable solution can be found.

If this did not work a Tribunal – which is a panel of three people – would hear your case. At the hearing they would listen to why you felt you had been treated wrongly and to any reasons that the person you complained about had for treating you like that. If they agree that you were treated unlawfully,

you may be awarded financial compensation or the person you complained about may be required to do something to put the situation right or make sure it doesn't happen again, like train their staff or give you your job back.

Question 14: How much money would I get if I won?

Answer 14: The sum of money you received would contain two parts: one part that would be calculated by adding up any money that you had lost because of what had happened to you (e.g. your pay if you were dismissed and unemployed). The second part would be proportionate to how much what has happened has affected you (which is called 'injury to feelings').

We are currently thinking about whether there should be a maximum limit on how much an employer or service provider might have to pay a person who makes a complaint. This is one of the questions in our questionnaire – which can be found online at: www.gov.gg/discriminationconsultation.

Question 15: Would my name be in the news if I had a hearing?

Answer 15: At the moment, in most cases, yes. It is important that we publish cases so that people can learn about how the legislation is applied and what they should and shouldn't do. We asked people about their experience of the sex discrimination legislation at the end of last year. Some people were concerned about bringing a case to a hearing because they would be named and future employers might find out and think they were a 'troublemaker'.

We don't think that holding hearings behind closed doors is a good idea (unless there are exceptional circumstances, for example if a vulnerable adult is involved or the case involved intimate details that it would not be appropriate to publish).

Question 16: What if I feel I have experienced discrimination already?

Answer 16: If you feel you have experienced discrimination at work you can get advice from the Employment Relations Service. We already have legislation that outlaws discrimination in employment on the grounds of sex, gender-reassignment and marriage. You might also be able to register a complaint of another kind if you think you have been unfairly dismissed for a discriminatory reason on the basis of one of the other characteristics. You can call the Employment Relations Service on 01481 732583 or email employmentrelations@gov.gg.

If you have been harassed Guernsey Police might be able to help – you can call them on 01481 725111.

Depending on your situation, you might also be able to get help from the organisation you have trouble with. You could speak to human resources or a senior manager at work about your concerns. If it was when you were accessing a service that you were discriminated against, think about making a formal complaint or speaking to a manager of the service.

For serious cases of discrimination where it is the government that is discriminating against you, and it relates to one of the rights in the European Convention on Human Rights you might be able to bring a case under the Human Rights (Bailiwick of Guernsey) Law, 2000. You would need to speak to a lawyer about this. If you can't afford a lawyer you might be able to get funding from Guernsey Legal Aid – you can call them on 01481 747530.

What do you think?

We are publishing our draft proposals now to get people's views. You can read a summary or a detailed version of the draft proposals, and answer a questionnaire on some of the key points. These documents are available at www.gov.gg/discriminationconsultation.

You can also contact us directly if you have questions or to let us know what you think about the draft proposals at:

equality@gov.gg

01481 732546

Discrimination Legislation, Level 4, Edward T. Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH

The Committee *for* Employment & Social Security will process any personal data which you provide, through this consultation, in accordance with the Data Protection (Bailiwick of Guernsey) Law, 2017. Further information about how your personal data is processed by the Committee *for* Employment & Social Security can be found via www.gov.gg/dp or by calling 01481 732546.

If you require this leaflet in a different format please email equality@gov.gg or call 01481 732546.