

Public Consultation Discrimination Legislation

List of Proposed Exceptions



States of
Guernsey

July 2019

Introduction

What is this document?

The Committee *for* Employment & Social Security are consulting on a set of draft proposals for new multi-ground discrimination legislation. This document forms part of a set of documents including:

- A questionnaire outlining some of the Committee's key questions
- A summary of the draft proposals
- Frequently Asked Questions documents
- A document with the technical detail of the draft proposals
- An easy read outline of the proposals

These are available at www.gov.gg/discriminationconsultation

This document lists the proposed exceptions to the rule of non-discrimination. You will need to review it in order to answer one of the questions in the questionnaire. You are also welcome to send any comments on the proposed exceptions to us by email at equality@gov.gg.

To be clear, the content of this document is the same as the content of Appendix A and B of the "Technical draft proposals" document.

What are exceptions?

If the discrimination legislation is agreed and comes into force then, as a general rule, any different treatment on the basis of age, carer status, disability, marital status, pregnancy and maternity status, race, religion, sex, sexual orientation or trans status will be unlawful.

However, there will be exceptions to that rule where different treatment is not considered unlawful discrimination for the purposes of the proposed legislation. This covers situations where it seems fair, reasonable, necessary, or justified to treat people differently. For example, one of the exceptions says that services who want to offer discounted tickets to families can continue to do so.

This list sets out our initial proposals about what those exceptions should be. It should be noted that this list might change, both following the consultation and States Debate, and also at the legal drafting stage – if the legal drafters identify something that is required to make this legislation coherent with other legislation or the legal system in Guernsey.

The exceptions are numbered for ease of reference.

If you require this document in a different format please contact us at equality@gov.gg or call us on 01481 732546.

Part A – Exceptions list – organised by field

A1 – Introduction

This list is identical to the list in Part B of this document but has been organised on the basis of field (i.e. employment, accommodation provision etc.) rather than protected ground (i.e. what applies for sex, disability, race etc.).

A2 – Reasons for different treatment which are not exceptions

Our proposals include some provisions that are not exceptions but which can allow people to act in ways that would otherwise be considered discrimination. These include positive action measures (which treat people differently to promote equality), providing appropriate adjustments to include disabled people (or not, if it is a disproportionate burden to do so), objective justification of certain types of discrimination and genuine occupational requirements.

These are discussed in more detail in sections 3, 4 and 5 of the technical draft proposals document.

A3 – Exceptions that apply to all fields

We are proposing that the exceptions in this section would apply in all or multiple fields – employment, goods or services provision, education provision, accommodation provision and in membership of clubs and associations.

Requirements of the law (no. 1)

We propose that if someone is doing something that they are required to do by law this would not be discrimination for the purposes of the proposed legislation. This includes where someone is required to act in compliance with the law of another country. If someone believes that there are equality issues related to the operation of a law they should let us know (equality@gov.gg). It would then be for the States to consider whether, when and how to change the law. In some cases, if a person feels that a law is discriminatory, they may be able to take a case under the Human Rights (Bailiwick of Guernsey) Law, 2000.

We also intend that the ability to make a discrimination complaint should not apply to anything done which is by the order of a court or tribunal or to judgements, awards or sentencing made by judges, magistrates, jurats, tribunals or others acting in a formal judicial capacity.

Wills and gifts (no. 2)

We propose that any person making a will or giving a gift can choose who benefits with regards to land, goods and property – this would not be subject to discrimination complaints. Any challenges to a will would be governed by existing legislation on wills and probate.

Preferential charging (no. 3)

We propose that people will be allowed to introduce or maintain preferential fees, charges or rates for anything offered or provided to people in specific age groups, people with children, carers or people with disabilities.

Privacy (no. 4)

We propose that if people are treated differently based on sex for the sake of privacy where they believe that embarrassment or infringement of privacy can be reasonably expected to result from the presence of a person of another sex, this is permissible.

Access to single sex spaces and services for trans people is discussed in section A13.

Transitional arrangements (no. 5)

There may be some historic schemes which have treated people differently with regards to the protected grounds (for example in social insurance, insurance or pension plans) in a way which would not be permissible when the legislation comes into force. We propose that such schemes are not subject to complaints if: there are reasonable and proportionate transitional arrangements agreed prior to the legislation entering into force to phase out the scheme; and these are already being implemented at the time the legislation comes into force with a view to reaching a position which would be compliant.

Health and safety – pregnancy (no. 6)

We propose that an employer may treat a person who is pregnant, has recently given birth or is breast feeding differently if there are strong, demonstrable reasons based on health and safety to do so, including a reallocation of duties or a temporary suspension from duties. However, steps taken to protect the health and safety of a pregnant person should not result in them being treated unfavourably.

In a service provision context, or with regards membership of an association, we propose provision of a service (or membership) might be varied or refused to a person who is pregnant, but only where a service would similarly be refused to a person with another physical condition. This should only be where the service provider or association reasonably believe that providing the service would create a risk to the person's health or safety. This

might cover, for example, not being permitted to fly after a certain stage of pregnancy, or undertake certain extreme sports activities.

A4 – Exceptions related to public functions

National security (no.7)

We propose that acts done for the purposes of safeguarding national security are exempt, but only where this is justified by the purpose.

Immigration (no. 8)

We propose that the Guernsey Border Agency would not be discriminating where it was acting in a way required to give effect to relevant UK immigration law or policy.

Population Management (no. 9)

Guernsey has a Population Management Law. The Law is designed to regulate the size and make-up of the population in order to support our economy and community both now and into the future. The Law is supported by a number of policies designed to attract the diverse range of skilled people needed to strengthen Guernsey's workforce and to provide clarity to those already resident.

We propose that action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs may take into account age, carer status, or nationality, national or ethnic origin. This includes relevant decisions related to permits for different categories of housing or permits for employment where based on strategic policy and informed by the identified needs of the population. Disability and pregnancy and maternity status may be referred to but only when considering the extension and/or type of permits for people who are already resident.

Household composition for grants, loans, or benefits (no. 10)

We propose that any income assessment for grants, loans or benefits provided by the States of Guernsey may take into account household characteristics, or family composition as part of the income assessment.

Determinations (no. 11)

We propose that it would not be discrimination, for the purposes of the proposed legislation, for an officer or Panel, with delegated authority, to make determinations which may take into account age, carer status and disability in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States of Guernsey or the relevant Committee thereof.

Residency status (no. 12)

We propose that a Committee of the States of Guernsey, or the States, may impose policy requirements which vary terms and conditions to access government services, facilities, grants, loans, benefits or access to employment or other opportunities based upon place of residence, length of residence and/or place of birth in order to distinguish between services for citizens/permanent residents and others. This would not constitute direct or indirect race discrimination for the purposes of the proposed legislation. However, it should be noted that any such decisions made by the States or its Committees should otherwise align with Guernsey's human rights obligations.

See also social housing allocations – included in the 'accommodation' section A12.

A5 – Employment – pay and other financial benefits

Minimum wage (no. 13)

We suggest that, for the purposes of the proposed legislation, it would not be considered direct or indirect discrimination for employers to base pay structures for apprentices or young people on the rates set out in minimum wage legislation – including where more than the minimum wage is paid, but this is related to the age bands within the minimum wage legislation.

Pay during statutory leave (no. 14)

In accordance with the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, offering paid leave, unpaid leave or reduced pay during maternity leave, maternity support leave or adoption leave does not constitute discrimination for the purposes of the proposed legislation.

Length of service and seniority (no. 15)

We intend that if older people are, on average, paid more than younger people or have different terms and conditions and this is because they are more senior or have longer service then this would not constitute age discrimination for the purposes of the proposed legislation.

Occupational benefits and pension schemes (no. 16)

By occupational benefits we mean schemes that provide benefits to all or a category of employees on their becoming ill, incapacitated or redundant. We propose that employers or providers of occupational benefits and pension schemes can use age criteria when administering occupational benefits and pension schemes:

- to fix ages for admission to a scheme or to fix an age at which you can claim benefits from it;
- to use ages in actuarial calculations when operating a scheme; or
- to provide different rates of severance payment based on the difference between the current age of the employee and their State Pension Age.

We propose that occupational pension schemes may also impose a maximum length of pensionable service or set different age-banded contribution levels for money purchase schemes (where the aim is to equalize the resultant benefit for comparable members).

We propose that occupational pension schemes can use gender (sex) specific actuarial factors if there is actuarial data to justify the difference, even though insurers are required to use gender-neutral factors in relation to annuity purchases.

We would welcome the views of industry on this proposed exception as part of this consultation.

See also see the proposed exception on Risk (no. 31) in section A8.

A6 – Employment - other

Immigration and population management (no. 17)

We intend that employers must continue to appropriately take into account immigration status and the requirements of Population Management – to do so would not be discrimination for the purposes of the proposed legislation.

Genuine and determining occupational requirements in part of a role (no. 18)

In some cases an employer may employ staff across a number of postings and duties, where some of these duties or postings could be considered to carry a genuine and determining occupational requirement (i.e. that a person of a particular description is required to perform those duties or hold those postings – for example, undertaking certain kinds of security search). In such a case, we suggest that it would not be discrimination for the purposes of the proposed legislation to allocate a person to a particular duty or posting on the basis of their meeting the genuine and determining occupational requirement, where an

employer must allocate a person of a certain description in order to maintain operations and meet requirements, provided that this is both objectively justifiable and is permissible in the employee's contract of employment.

Providing accommodation proportionate to family size (no. 19)

We propose that if an employer offers accommodation and this is proportionate to the occupant(s) family size this would not constitute discrimination for the purposes of the proposed legislation against employees with a different family size.

Family situations (no. 20)

We suggest that it would not be considered discrimination for the purposes of the proposed legislation, for employers to:

- grant individual requests for flexible working arrangements (provided that remuneration, leave and other benefits are equivalent on a pro-rata basis and that the right to request a flexible working arrangement is available to all employees);
- provide benefits in relation to care responsibilities (for children or family members) without this being a disadvantage to employees that do not have those responsibilities (e.g. flexible working, a crèche, priority car parking);
- provide a benefit to an employee in relation to a family situation, for example, additional paid leave during a period of family illness or following a bereavement, or giving a wedding gift;
- provide benefits in relation to an employee's family members (e.g. health insurance for a spouse or children) without that being considered a disadvantage for employees who do not have those family members.

Qualifications (no. 21)

We propose that it would not be indirect race discrimination, for the purposes of the proposed legislation, to require a person to hold a particular qualification to undertake a role. This might apply, for example, if someone had a professional qualification from another country which was not recognised in Guernsey (both for employers and for vocational bodies).

Supported employment (no. 22)

We suggest that, for the purposes of the proposed legislation, a person may provide supported employment for people with a particular kind of disability without this being considered discrimination against people with other kinds of disability.

Genuine and Determining Occupational Requirements and Employment Services (no. 23)

We intend that a provider of employment services (including vocational training) may restrict access to their training or services where employers they provide services to are operating Genuine and Determining Occupational Requirements which mean that they require persons of a particular description for those roles.

Ministers of religion (no. 24)

We propose that the grounds of marital status, religion, sex, sexual orientation and trans status, may be taken into account when a person is recruited into employment which is for the purposes of organised religion.

By 'recruitment for the purposes of organised religion' we mean primarily, the recruitment of ministers, celebrants or leaders of that religion, but this may also include, in a limited range of circumstances, others employed in religious capacities where the job involves representing or promoting the religion (e.g. youth workers who have a role in promoting a religion). It does not cover individuals recruited by religious organisations to undertake roles which are not related to representing or promoting that religion.

This exception may only be applied if the grounds of protection specified in recruitment are in line with the doctrine of the religion or if a significant number of the followers of the religion would be offended if a person who has a certain characteristic falling within the listed grounds of protection were to hold the post.

Safeguarding (no. 25)

We do not intend that anything in the proposals would require an employer to recruit, retain in employment or promote an individual if the employer is aware, on the basis of a criminal conviction of the individual or other reliable information, that the individual engages, or has a propensity to engage, in any form of sexual behaviour which is unlawful and there are relevant safeguarding concerns.

A7 – Education

Mature students (no. 26)

We propose that further and higher education institutions can treat mature students differently in the allocation of places and fees chargeable. Income assessments in respect of the award of higher education grants may set an age at which to treat a student as financially independent from their parents.

Different treatment based on assessed needs (no. 27)

We propose that it is not discriminatory for an education provider or authority to offer alternative or additional educational services in order to meet the assessed needs of a student where another student is not offered such services due to a difference in their assessed needs.

Admissions policies (no. 28)

We propose that a school may set an entry standard based on ability or aptitude. If an applicant does not meet the required standard for selection, for reasons related to, or in consequence of a disability, and despite appropriate adjustments having been offered or made available where relevant, then they, like other applicants who fail to meet that standard, may be refused a place.

We propose that religious schools can take religion into account in their admissions policies.

We also propose that single sex schools may take sex into account in their admissions policies. Schools that are primarily single sex may admit pupils of another sex only to particular classes or particular year groups. Boarding schools may offer boarding to only one sex, whilst taking mixed sex day pupils.

See section A13 also on proposed trans status exceptions.

Curriculum (no. 29)

We propose that when setting the curriculum, whilst representation might be desirable, it is not the intention of the Committee that someone could bring a complaint against the teaching of a subject on the basis that the set material or texts are not representative of all social groups or identities.

We intend that religious schools may alter their curriculum so that they focus religious education on their own religion and/or may provide only a chaplain of one religion.

Carers supporting more than one person (no. 30)

We suggest that where a carer provides care or support for more than one person, an education provider or provider of goods or services may allocate places preferentially to include both or all of the persons for whom care or support is provided. For the purposes of the proposed legislation, this would not be considered discrimination against carers who provide care or support for only one person who was not prioritised for a place. This would cover, for example, a school prioritizing the sibling of a child already in attendance over an only child if both are applying for a limited number of places in the same year group.

Please note that some of the other exceptions may be relevant for education providers. In particular see exceptions 48 on drama, 49 on sport, 55 on accommodation and 57 on trans status.

A8 – Financial services and personal pensions

Risk (no. 31)

We intend that people who provide personal pensions, annuities, insurance policies or any other services related to the assessment of risk would be allowed to use some of the protected grounds to undertake assessments and vary the service that they provide accordingly. However, this must be based on reliable and relevant data and differences in services provided should be proportionate to risk.

We suggest the relevant grounds should be:

- age
- disability

This does not include pregnancy or maternity status, sex or trans status – we are suggesting broadly following the UK position with regard to risk and the original exceptions in the UK Equality Act for sex, pregnancy and gender reassignment were repealed by the Equality Act 2010 (Amendment) Regulations, 2012 (SI 2012/2992).

We would welcome the views of industry as to whether these grounds are correct as part of this consultation.

See also provisions on Occupational Pensions in section A5.

A9 - Health and care related

Infectious disease (no. 32)

We propose that it would not be discrimination, for the purposes of the proposed legislation, to treat a person differently on the grounds of disability where the disability is an infectious disease, or where an assistance animal has an infectious disease, and different treatment is required for public health reasons.

Clinical judgement (no. 33)

We propose that if the difference in treatment of a person is solely based on a medical professional's clinical judgement this would not be discrimination for the purposes of the

proposed legislation. This is not intended to protect medical professionals from complaints if their use of a protected ground is prejudicial and not clinically relevant.

Legal capacity (no. 34)

We intend to include an exception which will permit difference in treatment where this is necessary in relation to a person's legal capacity status, in alignment with the new capacity legislation being developed.

Blood donation services (no. 35)

We propose that blood donation services may refuse to accept an individual's blood if the refusal is based on an assessment of the risk to the public or to the individual based on clinical, epidemiological or other relevant data. This is because our services in this area are reliant on support from the UK NHS and, in order to ensure continuity of these essential services for Guernsey, we need to maintain a position that is consistent with the UK's.

Preventative public health services (no. 36)

We intend to allow targeted preventative public health interventions including but not limited to screening programmes, immunization programmes, access to primary care mental health and wellbeing services, diabetic retinopathy, provision of free contraception and other such measures which are strategically aimed at particular groups where this is objectively justified through epidemiological or other relevant data. This may take into account: age, carer status, disability, pregnancy and maternity status, sex, sexual orientation, or trans status.

Care within the family (no. 37)

We suggest that if people are providing care to other people as if they were a family member – including care for a child, an elderly person or a disabled person – the arrangements made for how, to whom and where they provide care are not subject to this legislation.

Adoptive and foster parents (no. 38)

We suggest that it would be permissible to specify age requirements for a prospective adoptive or foster parent where the requirement is reasonable in light of the needs of the child or children concerned.

See also 'carers supporting more than one person (no.30)', in the education section above.

A10 - Goods or Services (other)

Cosmetic services that require physical contact (no. 39)

We suggest that it would not be discrimination, for the purposes of the proposed legislation, to treat a person differently on the basis of sex or trans status in relation to services of an aesthetic, cosmetic or similar nature, where the services require intimate physical contact between the service provider and the client.

Holidays aimed at particular age groups (no. 40)

We suggest that organisations may provide package holiday services aimed at particular age groups.

Requesting identification (no. 41)

We propose that age restricted services can request identification and refuse to serve individuals who appear to be below the required age who do not provide satisfactory identification.

Special interest services and services only suitable to the needs of certain persons (no. 42)

We intend that goods or services providers may permit differences in treatment where these are reasonably necessary to promote bona fide special interests or where the goods or services in question can be regarded as only suitable to the needs of certain persons. Segregation on the basis of colour is not permissible.

Broadcasters and publishers (no. 43)

We propose that broadcasters and publishers can exercise editorial discretion over their content (not advertising) to be able to publish a range of views and permit free speech but this would not go so far as to allow them to promote/incite discrimination, harassment or hatred.

Web information services (no. 44)

Information Society Services Providers (ISSPs) provide services through a website. We intend that ISSPs would not ordinarily be held responsible for the content of the data that they process, in particular where they are acting as a conduit, they provide caching of web pages, or they provide a 'hosting service'. As in the UK, an ISSP which creates cached copies of information, and becomes aware that the original information has been removed or disabled at source, must expeditiously remove or disable any cached copies it holds. Similarly, if an ISSP 'hosting service' becomes aware that information they hold contravenes the proposed legislation they should expeditiously remove the information or disable access to it.

A11 – Community, religion, cultural, entertainment, charities, sports, clubs and associations

Religious events and services (no. 45)

We propose that it would not be discrimination, for the purposes of the proposed legislation, to provide goods or services for a religious purpose only to people of a particular religious group.

We propose that acts of worship and religious ceremonies are not subject to this legislation including (but not limited to) the format of worship, the choice and use of religious texts, language and teaching, the nature of rituals and symbolism, who is permitted to participate in certain rites and so on. However, this exception is not intended to exempt religious organisations from any requirement to comply with the legislation. For example, religious organisations should still consider the access needs of disabled people; and should not arbitrarily exclude or deny the attendance of a person at an event generally open to the public, on the basis of a protected ground, where the reason for doing so is not connected to the religious requirements or doctrine reasonably associated with the nature of the event taking place.

We intend that religious celebrants of weddings would not be subject to a complaint of discrimination under the proposed legislation if they refuse to marry a couple on grounds of their marital status (i.e. for divorcees), religion, sexual orientation or trans status.

See also hiring of religious premises in section A12 and recruitment of ministers of religion in section A6.

Charities acting within their constituted aims (no. 46)

We propose that charities can provide benefits to people who share the same characteristic related to a protected ground if this is in line with their constituted aims and they can show that it is either a proportionate means of achieving a legitimate aim, or is compensating for a disadvantage linked to the characteristic. Charities may also restrict participation in activities (e.g. fundraising events) to promote or support the charity to people who meet a certain requirement. Racial segregation on the basis of colour is not permissible.

Clubs and associations – restricted membership (no. 47)

We are proposing that clubs and associations can restrict their membership to people who share a particular characteristic related to a protected ground. Religious organisations may restrict their membership based on religious belief and practice. In both of these cases, however, it is not permissible to racially segregate on the basis of colour.

Drama and entertainment (no. 48)

We suggest that the legislation should permit differences in treatment in relation to age, disability, race, sex or trans status where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment (for example, seeking a disabled actor to portray a character with a disability in a play).

Sports, games and other competitive activities (no. 49)

We intend that it would not be considered discrimination, for the purposes of the proposed legislation, to exclude a person from a sporting, gaming or competitive activity if the person is not capable of performing the actions reasonably required in relation to the competitive activity (including with an appropriate adjustment). Similarly, it would not be considered discrimination, for the purposes of the proposed legislation, if someone is not selected as part of a team or as a participant if there is a selection process by a reasonable method on the basis of skills and abilities relevant to the competitive activity.

We also intend that it would not be discrimination, for the purposes of the proposed legislation, to treat people differently according to age, disability, nationality, national origin or sex in relation to providing or organizing sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant. This would allow, for example, the formation of a Guernsey, women's, under 21 basketball team.

See in section A13 below a proposed exception on trans status and sports.

A12 - Accommodation and premises

Premises not generally available to the public (no. 50)

We propose that if a person sells, lets or otherwise disposes of property without this being generally available to the public or a section of the public (for example, through advertising it via an estate agent) then decisions the person makes in relation to the sale, letting or disposal are exempt from this legislation. This is intended to exempt, for example, family property transactions or agreements between friends about house-sitting and so on.

Religious buildings (no. 51)

We propose that organisations managing religious buildings, such as places of worship, may take their religious ethos into account in lettings policies.

Social housing and housing association allocations (no. 52)

We intend that social housing providers and housing associations can treat people differently when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs. This applies to the following grounds only: age, carer status, disability, and residency status (in so far as this is associated with the race ground).

Specialist accommodation (no. 53)

We propose that accommodation which is set aside for a particular use or for a particular category of people is permitted. For example, retirement homes, refuges, accommodation for particular categories of religious persons, accommodation for people with care needs and sheltered accommodation. Age criteria may be used with respect to accommodation for older people.

Accommodation provided in someone's home (no. 54)

We propose that if a person is providing accommodation in a premises where they or a near relative live (i.e. where this would affect their private or family life) then they are exempt from this legislation and may choose who they wish to accommodate. We intend that this would cover accommodating family members or friends in spare rooms or letting a room in a family house to a lodger where the premises remains primarily an individual's or family's home. It is not intended to exempt persons running guest houses or houses of multiple occupation or letting a separate and self-contained wing or apartment from the requirements of the legislation.

Communal accommodation (no. 55)

Communal accommodation is accommodation with shared sleeping or sanitary facilities for men and women which may, for reasons of privacy, need to be used only by persons of one sex. We propose that if someone providing accommodation excludes a person because of sex or trans status, then they must consider: whether and how far it is reasonable to expect that the accommodation should be altered or extended; whether further accommodation could be provided; and the relative frequency of demand or need for the accommodation by persons of each sex. *(A discussion in relation to trans status is included in section A13).*

Boarding schools, employers who accommodate staff, youth clubs and others for whom this is relevant may take their ability to provide accommodation according to this exception into account in admission or recruitment decisions.

Population Management (no. 56)

We propose that accommodation providers must appropriately take into account population management requirements; to do so would not be discrimination for the purposes of the proposed legislation.

Children in rental properties - we also intend to include an exception clarifying a limited range of circumstances in which it might be permissible to refuse a tenant on the basis that they have children. This is a question being asked in the consultation and is included in section A13 below.

A13 - Exceptions which we are asking questions about

Access to single sex services and spaces, sports and accommodation for trans people (no. 57)

We recognise that access by trans people to single sex services and spaces has been a subject of debate in the UK and elsewhere. It is worth noting, however, that the UK debate has arisen in relation to a proposed change to the UK gender recognition legislation which would make it easier for a person to legally change their gender, including on their birth certificate. We do not currently have gender recognition legislation in Guernsey.

Guernsey's existing discrimination legislation includes a 'gender reassignment' ground. We are proposing to retain a ground along the lines of 'gender reassignment' (though we have suggested calling it 'trans status'). With regards access to single sex spaces there are a range of options, with three positions commonly put forward:

- The first position would be that sex should be defined biologically and the expectation should be that trans people continue to use services based on biological sex regardless of whether they have transitioned. This would mean that trans women¹ would be expected to use services for men and trans men² would be expected to use services for women.
- Secondly, a position where it is assumed that trans people should be included as the gender that they present as, but that an employer or service-provider could exclude a trans person from a single-sex role, space or service in some circumstances if they could objectively justify doing so. It is possible further guidance could be produced in

¹ By 'trans women' we mean people whose original birth certificate states that they are male who have transitioned, or are transitioning to identify as a woman.

² By 'trans men' we mean people whose original birth certificate states that they are female who have transitioned, or are transitioning to identify as a man.

the future on when exclusion is objectively justifiable, for example, by an Equality and Rights Organisation if it is established.

- Lastly, it would be possible to say that, in all circumstances, trans women should be treated as women and trans men should be treated as men. This would mean that in no circumstances would it be legal to exclude a trans woman from a service or facility for women or a trans man from a service or facility for men.

The majority of the Committee's preferred option would be to allow a case by case approach and discretion where this can be justified. This reflects the complexity of needs associated with different stages of transition and different contexts where a trans person might be treated differently either for their own benefit (e.g. when accessing medical services) or because of the potential impact on other service users (e.g. when working with women recovering from sexual abuse who find people with male characteristics to be triggering).

A question on which position is preferable is included in our questionnaire.



Key question:

On what basis do you think trans people should have access to single sex spaces and services?

Let us know what you think and why.

Questionnaire available at www.gov.gg/discriminationconsultation

If the Committee's preferred position was adopted we would also expect to include the following exceptions:

- If a competitive sport is arranged based on sex, the organisers may restrict the participation of a person on the grounds of trans status but only if this is necessary in that case to secure fair competition. We would expect sports organisations to consult the evolving national or international best practice guidance on the question of trans inclusion.
- Where providing communal accommodation a provider may exclude a person on the basis of trans status if this can be objectively justified, but only if they have considered whether or how far it is reasonable to expect that the accommodation should be altered or extended to include that person appropriately, or whether further accommodation could be provided.

- We would anticipate that schools would also follow the above exception on single sex services where a school, or a particular activity is segregated on a sex basis. This would mean that trans pupils should usually be treated according to the gender that they present as, but that this should be managed on a case by case basis and different treatment in some contexts is permissible where this is objectively justified. Different treatment should never be such that it would impact the pupils' right to education.

There is not an exception relating to employment or recruitment, however, as with the other grounds, treating a trans person differently in recruitment would be subject to there being an objectively justified Genuine and Determining Occupational Requirement, as discussed in section 4.8 of the technical draft proposals document.

Children in rental properties (no. 58)

We know that, in many cases, private landlords currently advertise properties as not accepting children. The inclusion of carer status in the grounds of protection will mean that, in general, landlords will not be allowed to refuse to rent to someone based on the fact that they have children.

The Committee's initial thoughts about when it is acceptable to exclude children are as follows: Landlords may only take age, family composition (i.e. carer status), or pregnancy of a tenant or prospective tenant into account when letting a property if:

- the property is a care facility, such as a residential home or another special category of housing reserved for particular persons;
- the property is part of a development intended to be 'retirement housing' for older people;
- the family size is such that the dwelling would not comply with best practice [guidelines provided by environmental health](#);
- the property is a house of multiple occupation with communal facilities and there are safeguarding concerns related to children sharing these facilities with unfamiliar adults.

However, there is an opportunity to share your views with us on this point as part of the consultation questionnaire.



Key question:

What is your view on whether landlords should be able to specify “no children”?

Let us know what you think and why.

Questionnaire available at www.gov.gg/discriminationconsultation

Part B – Exceptions list – organised by protected ground

This list outlines the same policy on exceptions as the list in Part A (but in some cases has been summarised) and has been organised on the basis of the grounds of protection (i.e. what applies for sex, disability, race etc.) rather than field (i.e. employment, accommodation provision, etc.). For further detail on the proposed exceptions please see Part A.

Please note that the numbering, which is included for ease of referencing, corresponds with the numbering in Part A, so is not sequential.

B1 - Applicable to all grounds

We propose the following exceptions are applicable to all grounds:

- **Requirements of the law (no. 1)** - If someone is doing something that they are required to do by law, order of a court or tribunal, or something done in a judicial capacity, this would not be discrimination for the purposes of the proposed legislation.
- **Wills and gifts (no. 2)** - Making a will or giving a gift would not be subject to discrimination complaints.
- **Transitional arrangements (no. 5)** - There may be some historic schemes that have treated people differently with regards to the protected grounds (for example in social insurance, insurance or pension plans). These would not be subject to complaints if there are reasonable and proportionate transitional arrangements agreed, prior to the legislation entering into force, to phase out the scheme and these are already being implemented at the time the legislation comes into force with a view to reaching a position which would be compliant.
- **National security (no. 7)** - Acts done for the purposes of safeguarding national security would be exempt, but only where this is justified by the purpose.
- **Immigration and population management (nos. 8, 17 and 56)** - The Guernsey Border Agency would not be discriminating where it was acting in a way required to give effect to relevant UK immigration law or policy. Employers and accommodation providers must continue to appropriately take into account population management and immigration requirements.

- **Genuine and determining occupational requirements in part of a role (no. 18)** - In some cases an employer may employ staff across a number of postings and duties, where some of these duties or postings could be considered to carry a genuine and determining occupational requirement (i.e. that a person of a particular description is required to perform those duties or hold those postings – for example, undertaking certain kinds of security search). In such a case, we suggest that it would not be discrimination for the purposes of the proposed legislation to allocate a person to a particular duty or posting on the basis of their meeting the genuine and determining occupational requirement, where an employer must allocate a person of a certain description in order to maintain operations and meet requirements, provided that this is both objectively justifiable and is permissible in the employee's contract of employment.
- **Genuine and Determining Occupational Requirements and Employment Services (no. 23)** - A provider of employment services (including vocational training) may restrict access to their training or services where employers they provide services to are operating Genuine and Determining Occupational Requirements which mean that they require persons of a particular description for those roles.
- **Safeguarding (no. 25)** - Nothing in the proposals would require an employer to recruit, retain in employment or promote an individual if the employer is aware, on the basis of a criminal conviction of the individual or other reliable information, that the individual engages, or has a propensity to engage, in any form of sexual behaviour which is unlawful and there are relevant safeguarding concerns.
- **Curriculum (no. 29)** - When setting the curriculum, whilst representation might be desirable, it is not the intention of the Committee that someone could bring a complaint against the teaching of a subject on the basis that the set material or texts are not representative of all social groups or identities.
- **Blood donation services (no. 35)** - Blood donation services may refuse to accept an individual's blood if the refusal is based on an assessment of the risk to the public or to the individual based on clinical, epidemiological or other relevant data. This is because our services in this area are reliant on support from the UK NHS and, in order to ensure continuity of these essential services for Guernsey, we need to maintain a position that is consistent with the UK's.
- **Care within the family (no. 37)** - If people are providing care to other people as if they were a family member the arrangements made for how, to whom, and where they provide care are not subject to this legislation.

- **Special interest services and services only suitable to the needs of certain persons (no. 42)** - A goods or services provider may permit differences in treatment where these are reasonably necessary to promote bona fide special interests or where the goods or services in question can be regarded as only suitable to the needs of certain persons. Segregation on the basis of colour is not permissible.
- **Broadcasters and publishers (no. 43)** - Broadcasters and publishers can exercise editorial discretion over their content (not advertising) to be able to publish a range of views and permit free speech but this would not go so far as to allow them to promote/incite discrimination, harassment or hatred.
- **Web information services (no. 44)** - Information Society Services Providers (ISSPs) provide services through a website. We intend that ISSPs would not ordinarily be held responsible for the content of the data that they process, in particular where they are acting as a conduit, they provide caching of web pages, or they provide a 'hosting service' (see Appendix A for further details).
- **Religious events and services (no. 45)** - Acts of worship and religious ceremonies are not subject to this legislation including (but not limited to) the format of worship, the choice and use of religious texts, language and teaching, the nature of rituals and symbolism, who is permitted to participate in certain rites and so on. However, this exception is not intended to exempt religious organisations from any requirement to comply with the legislation. For example, religious organisations should still consider the access needs of disabled people; and should not arbitrarily exclude or deny the attendance of a person at an event generally open to the public on the basis of a protected ground where the reason for doing so is not connected to the religious requirements or doctrine reasonably associated with the nature of the event taking place.
- **Charities acting within their constituted aims (no. 46)** - Charities can provide benefits to people who share the same characteristic related to a protected ground if this is in line with their constituted aims and they can show that it is either a proportionate means of achieving a legitimate aim, or is compensating for a disadvantage linked to the characteristic. Charities may also restrict participation in activities (e.g. fundraising events) to promote or support the charity to people who meet a certain requirement. Racial segregation on the basis of colour is not permissible.
- **Clubs and associations – restricted membership (no. 47)** - Clubs and associations would be able to restrict their membership to people who share a particular

characteristic related to a protected ground, however, it is not permissible to racially segregate on the basis of colour.

- **Premises not generally available to the public (no. 50)** - If a person sells, lets or otherwise disposes of property without this being generally available to the public or a section of the public (for example, through advertising it via an estate agent) then decisions the person makes in relation to the sale, letting or disposal are exempt from this legislation.
- **Religious buildings (no. 51)** - Organisations managing religious buildings, such as places of worship, may take their religious ethos into account in lettings policies.
- **Specialist accommodation (no. 53)** - Accommodation which is set aside for a particular use or for a particular category of people is permitted. For example, retirement homes, refuges, accommodation for particular categories of religious persons, accommodation for people with care needs and sheltered accommodation.
- **Accommodation provided in someone's home (no. 54)** - If a person is providing accommodation in a premises where they or a near relative live (i.e. where this would affect their private or family life) then they are exempt from this legislation and may choose who they wish to accommodate. We intend that this would cover accommodating family members or friends in spare rooms or letting a room in a family house to a lodger where the premises remains primarily an individual's or family's home. It is not intended to exempt persons running guest houses or houses of multiple occupation or letting a separate and self-contained wing or apartment from the requirements of the legislation.

B2 – Age

We propose the following exceptions would apply to age (in addition to those that apply to all grounds in section B1).

- **Preferential charging (no. 3)** - Preferential fees, charges or rates for people in specific age groups would be permissible.
- **Population Management (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may take into account age (see Part A for further detail).

- **Determinations (no. 11)** - An officer or panel (with delegated authority) may make determinations which take into account age in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States of Guernsey or relevant Committee thereof.
- **Minimum wage (no. 13)** - It would not be considered direct or indirect discrimination for employers to base pay structures for apprentices or young people on the rates set out in minimum wage legislation – including where more than the minimum wage is paid, but this is related to the age bands within the minimum wage legislation.
- **Length of service and seniority (no. 15)** - If older people are, on average, paid more than younger people or have different terms and conditions and this is because they are more senior or have longer service then this would not constitute age discrimination for the purposes of the proposed legislation.
- **Occupational benefits and pension schemes (no. 16)** - By occupational benefits we mean schemes that provide benefits to all or a category of employees on their becoming ill, incapacitated or redundant. We propose that employers or providers of occupational benefits and pension schemes can use age criteria when administering occupational benefits and pension schemes:
 - to fix ages for admission to a scheme or to fix an age at which you can claim benefits from it;
 - to use ages in actuarial calculations when operating a scheme; or
 - to provide different rates of severance payment based on the difference between the current age of the employee and their State Pension Age.

We propose that occupational pension schemes may also impose a maximum length of pensionable service or set different age-banded contribution levels for money purchase schemes (where the aim is to equalize the resultant benefit for comparable members).

- **Mature students (no. 26)** - Further and higher education institutions can treat mature students differently in the allocation of places and fees chargeable. Income assessments in respect of the award of higher education grants may set an age at which to treat a student as financially independent from their parents.
- **Risk (no. 31)** - People who provide personal pensions, annuities, insurance policies or any other services related to the assessment of risk would be allowed to use age to undertake assessments and vary the service that they provide accordingly (see Part A for further detail).

- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
- **Adoptive and foster parents (no. 38)** - It would be permissible to specify age requirements for a prospective adoptive or foster parent where the requirement is reasonable in light of the needs of the child or children concerned.
- **Holidays aimed at particular age groups (no. 40)** - Organisations may provide package holiday services aimed at particular age groups.
- **Requesting identification (no. 41)** - Age restricted services can request identification and refuse to serve individuals who appear to be below the required age who do not provide satisfactory identification.
- **Drama and entertainment (no. 48)** - The legislation should permit differences in treatment in relation to age where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.
- **Sports, games and other competitive activities (no. 49)** - It would not be discrimination, for the purposes of the proposed legislation, to treat people differently according to age in relation to providing or organizing sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant. This would allow, for example, the formation of a Guernsey, women's, under 21 basketball team.
- **Social housing and housing association allocations (no. 52)** - Social housing providers and housing associations can treat people differently in relation to age when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs.
- **Specialist accommodation (no. 53)** - Age criteria may be used with respect to the provision of accommodation for older people.

B3 - Carer status

We propose the following exceptions would apply to carer status (in addition to those that apply to all grounds in section B1).

- **Preferential charging (no. 3)** - Preferential fees, charges or rates for carers or people with children would be permissible.
- **Population Management (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may take into account carer status.
- **Household composition for grants, loans, or benefits (no. 10)** - An income assessment for grants, loans or benefits provided by the States of Guernsey may take into account household characteristics or family composition as part of the income assessment.
- **Determinations (no. 11)** - An officer or panel (with delegated authority) may make determinations which take into account carer status in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States of Guernsey or relevant Committee thereof.
- **Providing accommodation proportionate to family size (no. 19)** - If an employer offers accommodation and this is proportionate to the occupant(s) family size this would not constitute discrimination for the purposes of the proposed legislation against employees with a different family size.
- **Family situations (no. 20)** - It would not be considered discrimination for the purposes of the proposed legislation, for employers to:
 - grant individual requests for flexible working arrangements (provided that remuneration, leave and other benefits are equivalent on a pro-rata basis and that the right to request a flexible working arrangement is available to all employees);
 - provide benefits in relation to care responsibilities (for children or family members) without this being a disadvantage to employees that do not have those responsibilities (e.g. flexible working, a crèche, priority car parking);
 - provide a benefit to an employee in relation to a family situation, for example, additional paid leave during a period of family illness or following a bereavement, or giving a wedding gift;

- provide benefits in relation to an employee's family members (e.g. health insurance for a spouse or children) without that being considered a disadvantage for employees who do not have those family members.
- **Carers supporting more than one person (no. 30)** - Where a carer provides care or support for more than one person, an education provider or provider of goods or services may allocate places preferentially to include both or all of the persons for whom care or support is provided. For the purposes of the proposed legislation, this would not be considered discrimination against carers who provide care or support for only one person who was not prioritised for a place. This would cover, for example, a school prioritising the sibling of a child already in attendance over an only child if both are applying for a limited number of places in the same year group.
- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
- **Social housing and housing association allocations (no. 52)** - Social housing providers and housing associations would be able to treat people differently in relation to carer status when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs.

Children in rental properties (no. 58) - There is a question asked about this in our questionnaire. For further discussion see section A13.

B4 – Disability

We propose the following exceptions would apply to disability (in addition to those that apply to all grounds in section B1).

- **Preferential charging (no. 3)** - Preferential fees, charges or rates for disabled people would be permissible.
- **Population Management (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may refer to disability but only when considering the extension and/or type of permit for people who are already resident (see Part A for further detail).

- **Determinations (no. 11)** - An officer or panel (with delegated authority) may make determinations which take into account disability in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States of Guernsey or relevant Committee thereof.
- **Supported employment (no. 22)** - For the purposes of the proposed legislation, a person may provide supported employment for people with a particular kind of disability without this being considered discrimination against people with other kinds of disability.
- **Different treatment based on assessed needs (no. 27)** - It would not be considered discriminatory, for the purposes of the proposed legislation, for an education provider or authority to offer alternative or additional educational services in order to meet the assessed needs of a student where another student is not offered such services due to a difference in their assessed needs.
- **Admissions policies (no. 28)** - A school may set an entry standard based on ability or aptitude. If an applicant does not meet the required standard for selection, for reasons related to, or in consequence of a disability, and despite appropriate adjustments having been offered or made available where relevant, then they, like other applicants who fail to meet that standard, may be refused a place.
- **Risk (no. 31)** - People who provide personal pensions, annuities, insurance policies or any other services related to the assessment of risk would be allowed to use disability to undertake assessments and vary the service that they provide accordingly (see Part A for further details).
- **Infectious disease (no. 32)** - It would not be discrimination, for the purposes of the proposed legislation, to treat a person differently on the grounds of disability where the disability is an infectious disease, or where an assistance animal has an infectious disease, and different treatment is required for public health reasons.
- **Clinical judgement (no. 33)** - If the difference in treatment of a person is solely based on a medical professional's clinical judgement this would not be discrimination, for the purposes of the proposed legislation. This is not intended to protect medical professionals from complaints if their use of a protected ground is prejudicial and not clinically relevant.
- **Legal capacity (no. 34)** - We intend to include an exception which will permit difference in treatment where this is necessary in relation to a person's legal capacity status, in alignment with the new capacity legislation being developed.

- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
- **Drama and entertainment (no. 48)** - The legislation would permit differences in treatment in relation to disability where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment (for example, seeking a disabled actor to portray a character with a disability in a play).
- **Sports, games and other competitive activities (no. 49)** - It would not be considered discrimination, for the purposes of the proposed legislation, to exclude a person from a sporting, gaming or competitive activity if the person is not capable of performing the actions reasonably required in relation to the competitive activity (including with an appropriate adjustment). Similarly, it would not be considered discrimination, for the purposes of the proposed legislation, if someone is not selected as part of a team or as a participant if there is a selection process by a reasonable method on the basis of skills and abilities relevant to the competitive activity.

We also intend that it would not be discrimination, for the purposes of the proposed legislation, to treat people differently according to disability in relation to providing or organizing sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant.

- **Social housing and housing association allocations (no. 52)** - Social housing providers and housing associations can treat people differently in relation to disability when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs.

B5 - Marital status

We propose the following exceptions would apply to marital status (in addition to those that apply to all grounds in section B1).

- **Family situations (no. 20)** - It would not be considered discrimination, for the purposes of the proposed legislation, for employers to:
 - provide a benefit to an employee in relation to a family situation, for example, additional paid leave during a period of family illness or following a bereavement, or giving a wedding gift; or

- provide benefits in relation to an employee's family members (e.g. health insurance for a spouse or children) without that being considered a disadvantage for employees who do not have those family members.
- **Ministers of religion (no. 24)** - Marital status may be taken into account in recruitment decisions for the purposes of organised religion (see Part A for details).
- **Religious events and services (no. 45)** - Religious celebrants of weddings would not be subject to a complaint of discrimination under the proposed legislation if they refuse to marry a couple on grounds of their marital status.

B6 - Pregnancy or maternity status

We propose the following exceptions would apply to pregnancy or maternity status (in addition to those that apply to all grounds in section B1).

- **Health and safety – pregnancy (no. 6)** - An employer may treat a person who is pregnant, has recently given birth or is breast feeding differently if there are strong, demonstrable reasons based on health and safety to do so, including a reallocation of duties or a temporary suspension from duties. However, steps taken to protect the health and safety of a pregnant person should not result in them being treated unfavourably. In a service provision context, or with regards membership of an association, we propose provision of a service (or membership) might be varied or refused to a person who is pregnant, but only where a service would similarly be refused to a person with another physical condition. This should only be where the service provider or association reasonably believe that providing the service would create a risk to the person's health or safety. This might cover, for example, not being permitted to fly after a certain stage of pregnancy, or undertake certain extreme sports activities.
- **Population Management – (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may refer to pregnancy and maternity status but only when considering the extension and/or type of permit for people who are already resident (see Part A for further detail).
- **Pay during statutory leave (no. 14)** - In accordance with the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 - offering paid leave, unpaid leave or reduced pay during maternity leave, maternity support leave or adoption leave does not constitute discrimination for the purposes of the proposed legislation.

- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).

B7 – Race

We propose the following exceptions would apply to race (in addition to those that apply to all grounds in section B1).

- **Population Management (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may take into account nationality, or national or ethnic origins (see Part A for further detail).
- **Residency status (no. 12)** - A Committee of the States of Guernsey, or the States, may impose policy requirements which vary terms and conditions to access government services, facilities, grants, loans, benefits or access to employment or other opportunities based upon place of residence, length of residence and/or place of birth in order to distinguish between services for citizens/permanent residents and others. This would not constitute direct or indirect race discrimination for the purposes of the proposed legislation. However, it should be noted that any such decisions made by the States or its Committees should otherwise align with Guernsey's human rights obligations.
- **Qualifications (no. 21)** - It would not be indirect race discrimination, for the purposes of the proposed legislation, to require a person to hold a particular qualification to undertake a role. (Both for employers and for vocational bodies).
- **Drama and entertainment (no. 48)** - The legislation should permit differences in treatment in relation to race where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.
- **Sports, games and other competitive activities (no. 49)** - It would not be discrimination, for the purposes of the proposed legislation, to treat people differently according to nationality or national origin in relation to providing or organizing sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant. This would allow, for example, the formation of a Guernsey, women's, under 21 basketball team.

- **Social housing and housing association allocations (no. 52)** - Social housing providers and housing associations can treat people differently when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs. This applies to residency status (in so far as this is associated with the race ground).

B8 - Religious belief

We propose the following exceptions would apply to religious belief (in addition to those that apply to all grounds in section B1).

- **Ministers of religion (no. 24)** - A person's religion may be taken into account in recruitment decisions for the purposes of organised religion (see Part A for details).
- **Admissions policies (no. 28)** - Religious schools can take religion into account in their admissions policies.
- **Curriculum (no. 29)** - Religious schools may alter their curriculum so that they focus religious education on their own religion and/or may provide only a chaplain of one religion.
- **Religious events and services (no. 45)** - It would not be discrimination, for the purposes of the proposed legislation, to provide goods or services provided for a religious purpose only to people of a particular religious group. We also intend that religious celebrants of weddings would not be subject to a complaint of discrimination under the proposed legislation if they refuse to marry a couple on grounds of their religion.
- **Clubs and associations – restricted membership (no. 47)** - Religious organisations may restrict their membership based on religious belief and practice.

B9 – Sex

We propose the following exceptions would apply to sex (in addition to those that apply to all grounds in section B1).

- **Privacy (no. 4)** - If people are treated differently based on sex for the sake of privacy where they believe that embarrassment or infringement of privacy can be

reasonably expected to result from the presence of a person of another sex, this is permissible.

- **Occupational benefits and pension schemes (no. 16)** - Occupational pension schemes can use gender (sex) specific actuarial factors if there is actuarial data to justify the difference.
- **Ministers of religion (no. 24)** - A person's sex may be taken into account in recruitment decisions for the purposes of organised religion (see Part A for details).
- **Admissions policies (no. 28)** - Single sex schools may take sex into account in their admissions policies. Schools that are primarily single sex may admit pupils of another sex only to particular classes or particular year groups. Boarding schools may offer boarding to only one sex, whilst taking mixed sex day pupils.
- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
- **Cosmetic services that require physical contact (no. 39)** - It would not be discrimination, for the purposes of the proposed legislation, to treat a person differently on the basis of sex in relation to services of an aesthetic, cosmetic or similar nature, where the services require intimate physical contact between the service provider and the client.
- **Drama and entertainment (no. 48)** - The legislation should permit differences in treatment in relation to sex where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.
- **Sports, games and other competitive activities (no. 49)** - It would not be discrimination, for the purposes of the proposed legislation, to treat people differently according to sex in relation to providing or organizing sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant. This would allow, for example, the formation of a Guernsey, women's, under 21 basketball team.
- **Communal accommodation (no. 55)** - Communal accommodation is accommodation with shared sleeping or sanitary facilities for men and women which may, for reasons of privacy, need to be used only by persons of one sex. We propose that if someone providing accommodation excludes a person because of sex then they

must consider: whether and how far it is reasonable to expect that the accommodation should be altered or extended; whether further accommodation could be provided; and the relative frequency of demand or need for the accommodation by persons of each sex. Boarding schools, employers who accommodate staff, youth clubs and others for whom this is relevant may take their ability to provide accommodation according to this exception into account in admission or recruitment decisions.

B10 - Sexual orientation

We propose the following exceptions would apply to sexual orientation (in addition to those that apply to all grounds in section B1).

- **Ministers of religion (no. 24)** - A person's sexual orientation may be taken into account in recruitment decisions for the purposes of organised religion (see Part A for details).
- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
- **Religious events and services (no. 45)** - Religious celebrants of weddings would not be subject to a complaint of discrimination under the proposed legislation if they refuse to marry a couple on grounds of their marital status (i.e. for divorcees), religion, sexual orientation or trans status.

B11 - Trans status

We propose the following exceptions would apply to trans status (in addition to those that apply to all grounds in section B1).

- **Ministers of religion (no. 24)** - A person's trans status may be taken into account in recruitment decisions for the purposes of organised religion (see Part A for details).
- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).

- **Cosmetic services that require physical contact (no. 39)** - It would not be discrimination, for the purposes of the proposed legislation, to treat a person differently on the basis of trans status in relation to services of an aesthetic, cosmetic or similar nature, where the services require intimate physical contact between the service provider and the client.
- **Religious events and services (no. 45)** - Religious celebrants of weddings would not be subject to a complaint of discrimination under the proposed legislation if they refuse to marry a couple on the basis of their trans status.
- **Drama and entertainment (no. 48)** - The legislation should permit differences in treatment in relation to trans status where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.

Access to single sex services and spaces, sports and accommodation for trans people (no. 57) – This is something which is addressed in our consultation – for a discussion see section A13.