



## Multi-Ground Discrimination Legislation Draft Proposals

### Questionnaire

#### Completing the questionnaire

You do not need to answer all of the questions to take part in this consultation, please answer those most relevant to you. You will need to have read the exceptions list we have published to complete Section 8. This is available at:

[www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation). If you do not have a paper copy of the exceptions list and would like one, please call us on 01481 732546.

This questionnaire is also available online at: [www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation)  
Please do respond online if you are able to - this means we can analyse your responses more efficiently.

For those responding on paper, please write clearly in blue or black ink.

Please ensure that responses reach us by **30<sup>th</sup> September 2019**.

#### Where to send paper responses:

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

#### Data protection – fair processing notice

This is an anonymous questionnaire. Respondents are not required to provide any personal data to participate in this consultation. However, if a respondent voluntarily provides any personal data in response to any of the survey questions, this will be treated as the respondent having provided consent to the processing of this data by the data controller. 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](http://www.gov.gg/dp) or by calling 01481 732546.

If you require this questionnaire in a different format, or have any other queries, please contact us at:

[equality@gov.gg](mailto:equality@gov.gg) or call us on 01481 732546

## Introduction

The Committee *for* Employment and Social Security ('the Committee') has published draft proposals for new multi-ground discrimination legislation in Guernsey.

You can read a summary of the draft proposals, or the full technical draft proposals at [www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation)

This questionnaire focuses on some key points. The Committee is particularly interested in what people think about these:

- **Section 1:** How should disability be defined?
- **Section 2:** When should children and young people be protected from age discrimination?
- **Section 3:** Families in rental properties.
- **Section 4:** How should the sex and trans status grounds relate?
- **Section 5:** Should there be an upper limit to the amount of compensation that an employer or service provider would potentially be required to pay in compensation?
- **Section 6:** What should the Equality and Rights Organisation do?
- **Section 7:** Phasing implementation – should some provisions be delayed?
- **Section 8:** When should it be ok to treat people differently? Do we have the right exceptions to the rule of non-discrimination?

If you have comments on points that are not covered in this questionnaire, there is an opportunity to provide any other comments at the end of the questionnaire, or you can write to us at [equality@gov.gg](mailto:equality@gov.gg) with your thoughts. The Committee welcomes feedback on any aspect of the draft proposals.

The Committee will be reviewing all the responses carefully to understand the reasoning behind your answers. This consultation will help the Committee to understand a full range of views and consider points which may not have been considered yet – it is about what people think and why. It is not intended to be a representative survey or opinion poll.

## Brief overview

The proposed legislation would allow people to make a formal complaint if they were treated less favourably than other people, or disadvantaged because of one of the following grounds of protection and in one of the following fields:

<b>Grounds of protection</b> <i>On what basis you can register a complaint</i>	<b>Fields</b> <i>In what context you can register a complaint</i>
<ul style="list-style-type: none"> <li>• Age</li> <li>• Carer status (people who provide care or support for a dependent child or a disabled person over the age of 18)</li> <li>• Disability</li> <li>• Marital status</li> <li>• Pregnancy or maternity status</li> <li>• Race (which includes colour, descent, national or ethnic origin and nationality)</li> <li>• Religious belief (including lack of religious belief)</li> <li>• Sex</li> <li>• Sexual orientation</li> <li>• Trans status</li> </ul>	<ul style="list-style-type: none"> <li>• As a student, or prospective student</li> <li>• At work</li> <li>• When you are using an employment agency, you are a business partner, or you are in a trade union or professional body, are a company director or hold a public office</li> <li>• When you apply for a job</li> <li>• When you buy, lease or rent property - both commercial and residential</li> <li>• When you access 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.</li> <li>• When you join or are a member of a club or association</li> </ul>

It is proposed that employers, service providers and people who are concerned about their rights, would be able to access advice about how the legislation worked. There would be an opportunity to try to resolve things through conciliation, before going to a hearing. However, if this didn't work then the case would be heard by a Tribunal. If the Tribunal found an employer or service provider had done something unlawful, they would have to pay the person who complained some financial compensation and/or take some action to put things right. For example, training their staff to stop the same thing from happening again.

## Before we begin

To help us to understand the context of your response, please answer the following questions:

**1. I am responding as (please select all that apply):**

- a member of the public
- an employer
- a provider of goods or services
- an accommodation provider
- an education provider
- a club or association
- a civil society organisation representing or responding on behalf of people who have rights under the legislation
- a business or trade association
- someone who would be involved in advising about or administering the legislation (e.g. a lawyer, tribunal panel member, or civil servant)
- a States Member
- other (please specify)

.....

**2. I live in (please select all that apply):**

- Guernsey (including Herm)
- Alderney
- Sark
- Jersey or Isle of Man
- UK
- elsewhere (please specify.....)
- not applicable

**3. (If applicable) my business or organisation operates in (please select all that apply):**

- Guernsey (including Herm)
- Alderney
- Sark
- Jersey or Isle of Man
- UK
- elsewhere (please specify.....)
- not applicable

**4. I am responding on behalf of an organisation and wish the Committee to know which organisation this response is from – my organisation is (name if appropriate, not compulsory):**

.....

## **Section 1: How should disability be defined?**

The Committee is proposing to adopt a broad definition of disability along the lines of that used in Ireland and Australia. The following is a working draft included for the purposes of consultation. It should be noted that this might change as a result of the next stages of the Committee's work which will take into consideration feedback from the consultation, and the work that will be undertaken by our legal drafters.

*Working draft definition:*

'disability' includes but is not limited to –

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
- (b) the presence in the body of organisms or entities causing, or likely to cause, disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person's body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, disease or illness which affects a person's thought processes, perception of reality, social interactions, emotions or judgement or which results in disturbed behaviour;

To avoid doubt, where a disability is otherwise covered by this definition, the source or duration of the disability is not relevant and there is no required level of impact on the ability of the affected person to function.

*For further discussion, see section 3.2.10-3.2.13 of the Technical Draft Proposals document, available at [www.gov.gq/discriminationconsultation](http://www.gov.gq/discriminationconsultation)*

**5. Do you have any comments on, or suggested changes to, this working draft definition of disability?**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

## **Section 2: When should children and young people be protected from age discrimination?**

The Committee is proposing that under 18s will be protected from discrimination on the basis of carer status, disability, marital status, pregnancy or maternity status, race, religious belief, sex, sexual orientation and trans status. So, for example, if a child was discriminated against because they were disabled they could bring a disability discrimination complaint – no matter what age they were. If a child were discriminated against on the basis of race, they could bring a race discrimination complaint. The following questions are about whether, if a child or young person is treated differently because of their age, they should be able to bring an **age discrimination** complaint.

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, their developmental needs. If the protection from discrimination were to extend to children and young people, we would need to identify and specify the circumstances when it is ok to treat children and young people differently on the basis of their age. Organisations working with children and young people would also need to think much more carefully about which age groups they offered services to and why.

In order to ensure that service providers can ensure age appropriate treatment without fear of an age discrimination complaint being made, the Committee is recommending that in the **provision of goods and services**, and **accommodation** and in the **membership of clubs and associations**, people will need to be 18 or over to register **age** discrimination complaints. As already explained, young people will be able to register discrimination complaints on the basis of the other grounds apart from age.

The Committee feels that school leavers aged 16-18 working full-time should not be treated unfairly and should have the same protection as the rest of the workforce. Therefore, the Committee is proposing that in the field of **employment** people can register **age** discrimination complaints when they are at or above school leaving age (currently 16). This would allow employers to ensure that terms and conditions were age appropriate for young people working in addition to going to school (e.g. in a weekend job).

The Committee also feels that young people should be protected from **age** discrimination in **further and higher education** institutions; access to further and higher education for people of any age should be dependent on whether a person meets the entry requirements, not their age. However, for safeguarding reasons people cannot register age discrimination complaints with regard to schools, nurseries or preschools, as it would not always be appropriate for adults or older children to access the same environment.

In summary, for **age discrimination** only, the Committee is proposing that:

- in education, people can register **age** discrimination complaints with respect to further and higher education institutions only (i.e. not schools, nurseries or pre-schools). This means that people of any age should have access to further and higher education if they meet the entry requirements.
- 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.

**6. Do you agree that protection from age discrimination in the field of education should only apply in further or higher education (i.e. not schools, pre-schools and nurseries)?**

- strongly agree
- agree
- neither agree nor disagree
- disagree
- strongly disagree
- no opinion

**7. Please explain the reasons for your answer:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

**8. Do you agree that only people who are at or above school leaving age (currently 16) should be able to register an age discrimination complaint in the field of employment?**

- strongly agree
- agree
- neither agree nor disagree
- disagree
- strongly disagree
- no opinion

**9. Please explain the reasons for your answer:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

**10. Do you agree that only people aged 18 or over should be able to register an age discrimination complaint in the fields of goods or services provision, accommodation provision or the membership of clubs and associations?**

- strongly agree
- agree
- neither agree nor disagree
- disagree
- strongly disagree
- no opinion

**11. Please explain the reasons for your answer:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

### Section 3: Families in rental properties

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. If implemented, this will be a significant change of practice for some landlords as currently it is often standard practice to say 'no children' in rental adverts.

**12. In your view should landlords:**

- always be able to specify 'no children'
- be able to refuse children in a limited range of circumstances
- never be able to refuse to accommodate children
- no opinion

In the draft proposals, the Committee have proposed that landlords may only take age, family composition (i.e. including carer status) or pregnancy of a tenant or prospective tenant into account when renting a property, in the following limited range of circumstances:

- 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 sharing these facilities with unfamiliar adults.

**13. If a limited range of circumstances are introduced, do you agree with the Committee's proposals, outlined above?**

- strongly agree
- agree
- neither agree nor disagree
- disagree
- strongly disagree
- no opinion

**14. Please explain the reasons for your answer:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

## **Section 4: How should the sex and trans status grounds relate?**

The current Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 protects people from discrimination on the basis of (amongst other things):

- being a man or a woman; and
- gender reassignment (which covers a person who intends to undergo, is undergoing or has undergone gender reassignment).

The Committee thinks that trans people should continue to be protected from discrimination and is considering how best to frame this in the legislation. We are proposing including two grounds of protection related to gender:

- **Sex** – which covers where someone is being discriminated against on the basis of the gender binary, because of stereotypes about men and women. To make a complaint a man would compare themselves to a woman who was treated more favourably than them or vice versa.
- **Trans status** – which covers discrimination against people who have undergone, are undergoing or intend to undergo a transition from being identified as a man to identifying as a woman or vice versa. To make a complaint a trans person would compare themselves to someone who isn't trans.

In most cases it will be clear whether the person making the sex discrimination complaint should be considered a man or a woman (for the purposes of the complaint). The definition has some relevance when trans people wish to make a complaint or when someone making a complaint wishes to compare themselves to a trans person.

Sex could be defined biologically (in which case, a person's sex, for the purposes of sex discrimination, would always be the sex a person originally transitioned from). It could be defined based on gender identity (in which case, for the purposes of sex discrimination, a trans person would be treated as the gender identity they have transitioned to). The

preferred position of the majority of the Committee would be simply to define sex as ‘being a man or a woman’. If a dispute arose in a sex discrimination case about whether a trans complainant or a trans comparator was a man or a woman, the Tribunal would have to determine whether it was most appropriate to consider that person a man or a woman in those particular circumstances. It is intended that this would reflect the nature of the discrimination in question and a relevant question would be whether the alleged discriminator was treating them as a man or a woman and why. Please note that the definition of sex would not necessarily impact trans people’s access to single-sex spaces, which is discussed next.

**15. Please select how you think sex should be defined in the legislation:**

- as ‘being a man or a woman’ (with the Tribunal deciding which is most appropriate in the particular circumstances if there is a dispute)
- based on biological sex at birth
- based on the gender someone identifies as
- no opinion
- other (please specify)

.....  
.....

With regards to access to single sex spaces and services there are a range of options, with three positions commonly put forward. In these options where we use ‘trans man’ we mean a person, biologically female at birth, who has transitioned or is transitioning to being a man; and by ‘trans woman’ we mean a person, biologically male at birth, who has transitioned, or is transitioning to being a woman.

- 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 women would be expected to use services for men and trans men 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 space or service, in some circumstances, if they could objectively justify doing so. It is possible further guidance could be produced

on when exclusion is objectively justifiable in future, 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 Committee's preferred option, by a majority, would be the second option: 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).

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

- based on their gender identity, unless it can be objectively justified to do otherwise
- based on their gender identity, in all cases
- based on biological sex at birth, in all cases
- no opinion
- other (please specify)

.....

**17. Please explain the reasons for your answers to questions 15 and 16:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

## **Section 5: Compensatory awards – should there be a limit?**

If someone wins a case under the existing sex discrimination legislation in Guernsey then they can receive a financial award of up to 3 months' pay. This figure is not varied according to how much someone has lost or what harm they have suffered.

As complaints can currently only be registered in the field of employment, awards are linked to pay. However, it is proposed that in the future, complaints can be registered about discrimination in the provision of education, goods, services, clubs and associations and accommodation (as well as in relation to employment) it would not be appropriate to link awards to pay where the complainant is not paid by the organisation they are making a complaint about. Consequently, the Committee have decided that they would like to introduce compensatory awards which are proportionate to the loss someone has experienced. This would most likely include two elements:

- **Financial loss** which is calculated based on what a person has actually lost (e.g. lost wages if they were unemployed for a time as a consequence of being discriminated against), and

- **Injury to feelings** which would be determined on the level of hurt and distress caused by the discrimination based on a simple scale with three bands, similar to the 'Vento Scale' used in the UK. The lower band tends to be for one-off relatively minor incidents, the highest band for the most serious cases which could be an ongoing situation or series of incidents which publicly humiliate or degrade an individual. Injury to feelings includes subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.

This would mean that someone who had been seriously affected, financially and personally, by discrimination which had happened over a long period of time would receive higher compensation than someone who had experienced a more minor one-off incident.

The financial loss and injury to feelings elements could either have no upper limit or could have an upper limit applied. An upper limit would mean that even if a case was very serious, the employer or service provider would not have to pay more than that limit. This would mean less compensation would be available for people who have experienced very serious discrimination. Its advantage would be that it would reduce the potential financial loss for employers and service providers to a certain limited, known quantity. Having no upper limit or a high upper limit would not mean that the average award for cases would be high (unless there were a lot of very severe cases). It would only be relevant for the more severe cases and not cases in general.

In the UK there is no upper limit on compensation for financial loss. There is an upper limit on compensation for injury to feelings which is set at £44,000, though this can be exceeded in exceptional cases.

In Jersey there is an upper limit of £10,000 in total, with a limit of £5,000 for the injury to feelings element.

In Ireland there is an upper limit of €40,000 or 2 years pay (whichever is higher) in total.

Concerns have previously been raised that the awards for discrimination in Guernsey are too low.

*For further information on awards, see section 8.7 of the technical draft proposals document, available at: [www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation)*

**18. Do you think there should be an upper limit to compensation for financial loss?**

- upper limit of £5,000
- upper limit of £10,000
- upper limit of £25,000
- upper limit of £50,000
- upper limit of £75,000
- upper limit of £100,000
- no upper limit
- other (please specify)

.....  
 no opinion

**19. Do you think that there should be an upper limit to compensation for injury to feelings?**

- upper limit of £5,000
- upper limit of £10,000
- upper limit of £25,000
- upper limit of £50,000
- upper limit of £75,000
- upper limit of £100,000
- no upper limit
- other (please specify)

.....  
 no opinion

**20. Please explain the reasons for your answers to questions 18 and 19:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

## **Section 6: Equality and Rights Organisation (ERO)**

In 2013, as part of the Disability and Inclusion Strategy, the States approved the principle of establishing an Equality and Rights Organisation, subject to a business plan being developed. The Committee *for* Employment & Social Security is in the process of developing a business plan for such an organisation.

The Disability and Inclusion Strategy envisaged an independent statutory organisation seeking to promote and protect both equality and human rights.

Human rights include equality and non-discrimination as a cross-cutting theme, but are significantly broader – The UN Declaration of Human Rights covers everything from the right to be free from torture to the right to social security.

To be clear, the Committee is proposing that the adjudication of complaints would be undertaken by the Employment and Discrimination Tribunal (or the Royal Court for human rights cases), not the Equality and Rights Organisation. The Committee hopes that the organisation will support a smooth transition into force of the proposed legislation by providing advice, information and awareness raising; enabling a more proactive and preventative approach to non-discrimination; and being part of a structure which allows for fast, effective and informal resolution of concerns.

*You can find out more about this in section 7 of the technical draft proposals document available at [www.gov.qg/discriminationconsultation](http://www.gov.qg/discriminationconsultation)*

**21. From your perspective, what would be the five most important things to include in the mandate of an Equality and Rights Organisation?**

- promoting human rights
- promoting equality
- issuing codes of practice on equality issues
- providing advice and information to individuals with equality complaints
- providing advice and information to employers and service providers about equality
- providing advice and information to individuals with human rights complaints
- providing legal or financial support for individuals bringing a case to a Court or Tribunal
- providing support for service providers thinking about accessibility for disabled people
- bringing public interest discrimination complaints in its own right to a Court or Tribunal
- helping to resolve discrimination issues informally before a formal complaint is made, where possible
- advising government about human rights
- advising government about equality
- monitoring compliance with human rights standards
- investigating organisations and giving recommendations in relation to equality
- issuing compliance notices and/or issuing civil penalties when people do something discriminatory
- holding public inquiries on systemic equality issues and human rights violations
- researching equality in Guernsey
- researching human rights in Guernsey
- developing relationships with international organisations, such as the UN and networks of equality and rights bodies
- other (please specify)

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.....

**22. Please explain the reasons for your choices above:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

The Committee is considering who should give advice to people who believe they have experienced discrimination, and advice to employers and service providers. This could be something that an Equality and Rights Organisation could do, but equally, could sit elsewhere.

**23. If you were to experience discrimination, which of the following organisations would you be most comfortable seeking advice from?**

- an independent Equality and Rights Organisation
- the Employment Relations Service (States of Guernsey – potentially renamed or expanded to cover forms of discrimination not related to employment)
- other States of Guernsey staff
- my own lawyer
- a community or charitable organisation
- my trade union
- a Human Resources professional
- other (please specify)

.....

**24. If you were seeking advice about discrimination as an employer or service provider, which of the following organisations would you be most comfortable seeking advice from?**

- an independent Equality and Rights Organisation
- the Employment Relations Service (States of Guernsey – potentially renamed or expanded to cover forms of discrimination not related to employment)
- other States of Guernsey staff
- my own lawyer
- a community or charitable organisation
- an organisation of employers or a business association
- a Human Resources professional
- other (please specify)

.....

**25. Please explain the reasons for your answers to questions 23 and 24:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

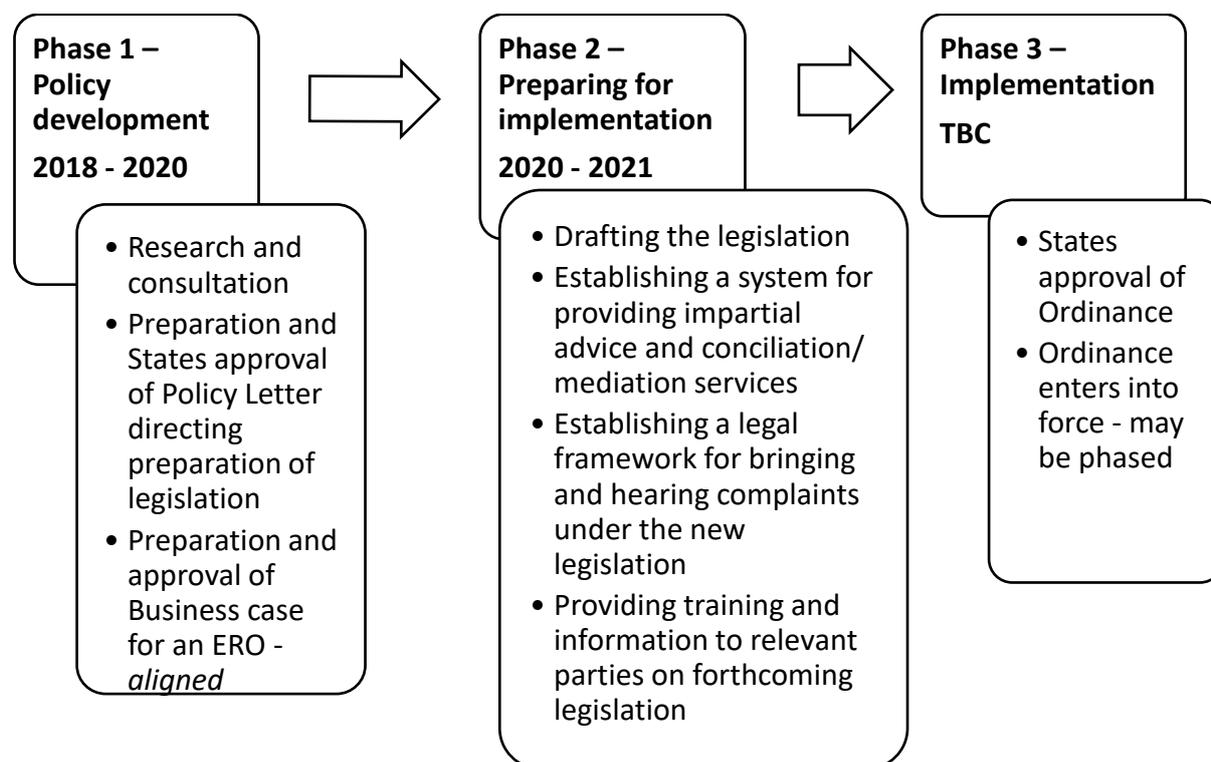
**Section 7: Phasing implementation – how much preparation time is needed?**

While the Committee is keen to ensure that people’s rights are protected as soon as possible, the legislation is not intended to catch out businesses or others with new duties or responsibilities. The Committee seeks the views of the community about what the appropriate balance should be between implementing rights quickly, and the needs of employers and service providers to have some time ahead of the legislation coming into

force to make preparations (e.g. to change current practices, amend existing policies and procedures, introduce new policies and procedures, carry out training, etc).

It would be possible to delay some provisions of the legislation in order to phase in the legislation gradually.

To be clear, this section is about when people and organisations have to comply with the legislation. It is not about what the legislation will contain.



The Committee is committed to bringing policy proposals for the legislation back to the States for debate in the first half of 2020 – before the election. However, further work will be required following this to draft the legislation and ensure the enforcement structure is ready to hear cases. Consequently, as has been explained previously, the earliest all or part of the legislation could come into force would be 2021. However, some sections of the legislation could come into force at a later date – a specified number of months or years after the main part of the legislation comes into force.

In particular, the Committee is aware that employers and service providers may think that their company will not be ready to be challenged on equal pay provisions or the physical accessibility of their buildings by 2021, and need more time to implement changes (there are separate questions on these points below). However, there may be other aspects which employers or service providers might suggest delaying.

**26. Do you think that the legislation should come into force all at once or should it be phased in?**

- all at once
- phased in (please specify which aspects you feel should be delayed in question 27 below)
- no opinion

**27. Please explain the reasons for your answer – in particular, if you think the legislation should be phased in, which aspects do you feel should be delayed, and why?**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

### **Equal pay for work of equal value**

The proposals say that it would be discriminatory for someone to be paid differently based on any of the protected grounds. It would not be discriminatory for people to be paid differently if the reason for the difference were something other than the protected grounds; for example, length of service, job performance, or seniority.

When comparing people who are doing the same, or very similar, jobs and working for the same employer it should not be too complicated to determine if people are being paid equally. For example, if male cleaners do the same work as female cleaners in the same company but are paid more per hour, this would be discriminatory. The Committee intends to propose the introduction of the right to equal pay for people in these situations as soon as the legislation comes into force.

However, the international standards go further than this. Article 7 of the International Covenant on Economic, Social and Cultural Rights – which has been extended to Guernsey – says “States Parties... recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular... equal remuneration for work of equal value.” In their [General Comment No. 23](#) the UN Committee clarify that “Not only should workers receive equal remuneration when they perform the same or similar jobs, but their remuneration should also be equal even when their work is completely different but nonetheless of equal value when assessed by objective criteria”. This would mean, for example, that someone working in a canteen could compare their wages with someone else who works as a care-taker for the same employer, although their roles are very different. The complaint would be made based on “the “value” of the work, evaluation factors should include skills, responsibilities and effort required by the worker, as well as working conditions.” The Convention states that “States Parties should adopt legislation and other measures to promote equal remuneration for work of equal value”.

Introducing legislation for equal pay for work of equal value in Guernsey would mean that, to manage the risk of a complaint, employers might be advised to use a job evaluation tool to ensure that pay across all staff groups is objectively related to factors such as skills and responsibilities. This may take some time to do.

One option that the Committee is considering is whether to delay the implementation of the provision on equal pay for work of equal value. This would mean that a provision would be included within the overall framework of the discrimination legislation. However, this particular aspect of the legislation would not come into force until some time after the rest of the legislation has come into force – meaning people could not bring complaints of equal pay for work of equal value to start with. This would give employers time to undertake pay audits.

Please note that the legislation will not come into force before the beginning of 2021 at the earliest, due to the time needed to bring policy proposals to the States in April 2020 and then to draft the legislation; this question is asking whether there should be any further/additional delay beyond 2021 to legislation on equal pay for work of equal value coming into force.

*For further information on equal pay, see section 4.5 of the technical draft proposals document available at [www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation)*

**28. When do you think someone should be able to register a complaint of equal pay for work of equal value?**

- as soon as the legislation comes into force
- one year after the legislation comes into force
- two years after
- five years after
- ten years after
- no opinion
- other (please specify).....

**29. Please explain the reasons for your answer:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

**Anticipatory accessibility duty and physical building alterations**

Accessibility is an important issue for disabled people. Accessible services are services which are designed to include as wide a range of people as possible.

Alongside a duty to provide appropriate adjustments in response to an individual disabled person, the Committee intends to propose that the legislation will include an anticipatory accessibility duty for education, goods or service providers (including the public sector).

This proposed duty would not apply to employers, accommodation providers, and services restricted to a club or association membership – they would only have a duty to respond to individual employee’s, tenant’s or member’s needs for appropriate adjustments as they arise (i.e. reactively in response to individuals rather than proactively for the population as a whole).

Under the proposed anticipatory accessibility duty there is a requirement to consider common needs that might arise and how they can be accommodated in advance of a situation emerging.

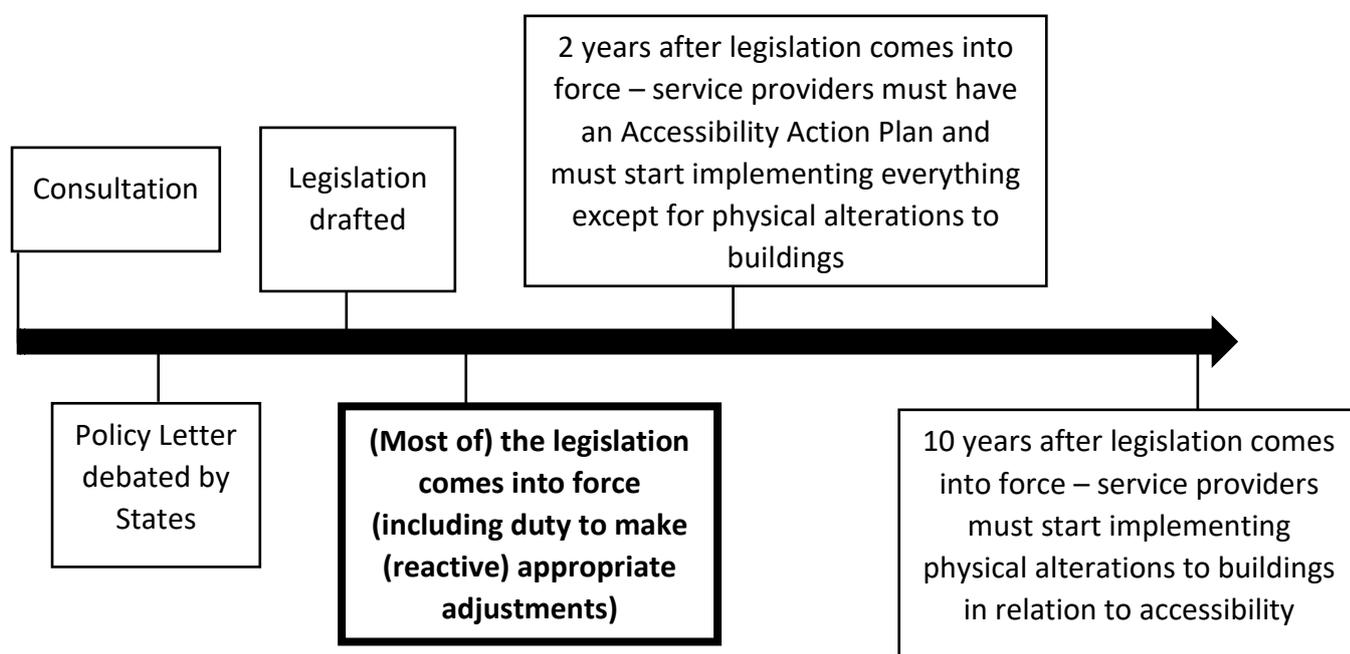
This can be done by:

- carrying out an access audit;
- developing an Accessibility Action Plan (which is appropriate and proportionate); and
- taking steps to implement the plan over a reasonable period of time.

Education providers and goods and service providers would not be expected to take action which was disproportionate or not technically feasible. They would not have to make sure that all of their services met certain standards by a particular date. However, they would need to show they had given appropriate consideration to access needs and were, on a prioritised basis, making changes to make their services more accessible over a period of time.

The Accessibility Action Plan would cover both the design of physical spaces, and other elements such as web design, technological interfaces, staff disability awareness training, signage, provision of hearing loops and so on.

The Committee is proposing that, when the legislation comes into force, the duty to make appropriate adjustments will immediately come into force. It is proposed that there will be a two year delay before people have to have Accessibility Action Plans in place and that there will be a ten year delay after the legislation comes into force before service providers and education providers need to begin implementing physical alterations to buildings.



*Appropriate adjustments and the anticipatory accessibility duty are discussed in more detail in section 6 of the technical draft proposals document available at:*

[www.gov.qg/discriminationconsultation](http://www.gov.qg/discriminationconsultation)

**30. How much time after the commencement of the legislation do you think education providers and providers of goods and services should be given to carry out an access audit, and develop an Accessibility Action Plan that prioritises what they will do to improve accessibility?**

- no additional time. They should have an Accessibility Action Plan in place by the time the legislation comes into force.
- one year after the legislation comes into force
- two years after
- five years after
- ten years after
- no opinion
- other (please specify).....

**31. How much time after the commencement of the legislation do you think education providers and providers of goods and services should be given before beginning to implement physical changes to buildings as part of an Accessibility Action Plan?**

- no additional time. They should begin making physical alterations to buildings as soon as the legislation comes into force
- one year after the legislation comes into force
- two years after
- five years after
- ten years after
- no opinion
- other (please specify).....

## Appropriate adjustments

The next question relates to appropriate adjustments, which are changes made in response to an individual employee's or service user's needs. The Committee is proposing that employers and service providers should have a duty to respond to individual's needs as soon as the legislation comes into force, providing it is not a disproportionate burden on them to do so. This might include physical modifications to buildings, though many appropriate adjustments will not be about buildings – they might be about a piece of equipment that is needed or a change in the way that something is done.

**32. When do you think the duty for employers or service providers to respond to requests for appropriate adjustments that require a physical alteration to a building (that is not a disproportionate burden for the employer or service provider to provide) should commence?**

- as soon as the legislation comes into force
- one year after the legislation comes into force
- two years after
- five years after
- ten years after
- no opinion
- other (please specify).....

**33. Please explain the reasons for your answers to questions 30, 31 and 32:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

## Section 8: Permitted exceptions to the legislation

The proposed legislation would mean that it would be unlawful to treat people differently on the basis of the protected grounds or combination of the grounds. Sometimes, however, it might be fair and reasonable to treat people differently. In order to make sure that these differences in treatment can continue to be lawful we need to specify exceptions to the rule of non-discrimination.

The exceptions allow things like lower charges for families or older people (without this being unlawful discrimination on the carer status or age grounds); or having a men's football match for a particular age group (without this being unlawful discrimination on the age or sex grounds).

A list of exceptions that the Committee is proposing can be found at [www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation)

- 34. If you would like to suggest any additions or changes to the proposed list of exceptions, please state here and why:**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

And finally...

**35. Do you have any other comments on any aspects of the proposals?**

*Please attach an additional sheet if you require more space but mark the number of the question you are answering clearly.*

**Thank you for completing the questionnaire.**

Please return completed copies to: Discrimination Legislation, Level 4, Edward T. Wheadon House, Le Truchot, St Peter Port, GY1 3WH.