

Discrimination legislation: draft proposals

Frequently Asked Questions

Accommodation providers

Updated: August 2019

This leaflet has been created to highlight aspects of the discrimination legislation draft proposals of relevance for accommodation providers including landlords and estate agents.

The content of this leaflet explains **what it would mean for accommodation providers if the proposals for discrimination legislation were agreed by the States in their current form.**

The draft proposals are currently out for consultation and could be amended as a result of the consultation or by the States. Consequently, this leaflet provides an explanation of the draft proposals and **does not constitute advice** about what the legislation will contain, as this may change.

More information as well as an opportunity to give your views on the draft proposals, is available online at www.gov.gg/discriminationconsultation. The consultation is open until **Monday 30 September 2019**. Once the consultation closes the Committee will consider the feedback received and whether to modify the proposals. A summary of the consultation results will be published in December 2019.

Question 1: How long do I have to prepare for the legislation?

Answer 1: The Committee is aiming to return a final set of proposals to the States for debate by April 2020. If the States approves the proposals then the legislation would need to be prioritised for drafting, drafted and return to the States for final agreement. There would also need to be work undertaken to ensure that everything is set up to give people advice about the new legislation and to hear cases. The very earliest the legislation could come into force would be 2021.

Question 2: What is discrimination?

Answer 2: In the draft proposals 'discrimination' means treating a person or particular group of people differently, especially in a worse way from the way in which you would treat other people, because of a personal characteristic that they

have, such as their race, sex, age, sexual orientation, etc. These characteristics are referred to as 'grounds of protection' in the Committee's proposals.

The proposed legislation will prohibit discrimination in a range of fields including employment and the provision of goods, services, education and accommodation so this is of relevance to private and public sector residential and commercial landlords in Guernsey. The Committee's policy aim in regards to accommodation is to ensure that people have equal opportunity to access residential and commercial property.

Question 3: What are the proposed grounds of protection?

Answer 3: The ten proposed grounds of protection are: age, carer status (people who provide care or support for a dependent child or a disabled person over the age of 18), disability, marital status, pregnancy or maternity status, race (which includes colour, descent, national or ethnic origin and nationality), religious belief (including lack of religious belief), sex, sexual orientation and trans status.

Question 4: Who is an accommodation provider for the purposes of the proposed legislation?

Answer 4: Accommodation providers include people who sell, rent or lease commercial or residential property or land to others, such as estate agents, landlords and individuals who rent or sell property. It also includes government services and charities who provide accommodation or accommodation services.

Question 5: What must accommodation providers be aware of when leasing or renting property?

Answer 5: Accommodation providers must not discriminate on any of the protected grounds, when deciding who to sell or rent property to. This applies to prospective tenants and existing tenants.

They should not refuse a person's application for purchasing or renting a property on the basis of the protected grounds, such as because they are disabled or living in a same sex partnership for example. Accommodation providers must also not provide the accommodation on different or less favourable terms and conditions.

Accommodation providers should not discriminate against an existing tenant on the basis of any of the protected grounds by:

- denying or limiting access to a benefit associated with their accommodation;

- evicting them;
- subjecting them to a detriment, or
- refusing to allow reasonable alterations to the property.

To clarify, this doesn't mean that someone with a characteristic covered by one of the grounds of protection can't, for example, be evicted for a reason unconnected with that characteristic (e.g. they have not complied with a term or condition of their lease).

A person will be able to register a complaint to the Employment and Discrimination Tribunal ('the Tribunal') if they consider that they have been discriminated against in relation to a protected ground, and if successful may be awarded financial compensation and/or an order may be made by the Tribunal, directing the accommodation provider to make (or allow) the adjustment.

Accommodation providers should also be mindful not to do any of the following actions as they may also give rise to a claim:

- harass tenants/prospective tenants;
- permit the harassment of tenants/prospective tenants;
- victimise a person who tries to enforce their rights or support someone else to, under the proposed legislation;
- issue adverts which could be interpreted as displaying an intention to discriminate, or
- cause, instruct or induce another person to undertake a prohibited act.

Question 6: I have heard that these proposals mean that a landlord will no longer be able to specify 'no children' when renting properties – why is that?

Answer 6: 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 dependent children. The Committee understands that, if implemented, this will be a significant change of practice for some landlords.

In the draft proposals, the Committee has 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.

The Committee has included some questions regarding this aspect of the proposals in its consultation questionnaire which is available online at www.gov.gg/discriminationconsultation.

Question 7: What is an 'appropriate adjustment' and do accommodation providers have to make appropriate adjustments for prospective tenants and/or existing tenants?

Answer 7: An 'appropriate adjustment' is a necessary and appropriate modification or adjustment for a disabled person, where needed in a particular case. An appropriate adjustment should not impose a 'disproportionate burden' on the person providing the adjustment.

The Committee is proposing that providers of both residential and commercial property should be under a duty to provide (and pay for) appropriate adjustments for anything which does not involve physical alterations to the fixed features of a building. This might include adjustments in how they communicate with tenants, how they collect rent, signage or adjustments to fittings like door handles required by the tenant, provided it is not a disproportionate burden on the accommodation provider to provide the adjustment. Not complying with the duty would constitute discrimination.

The appropriate adjustment duty is a reactive duty, and only needs to be considered when an accommodation provider becomes aware of the need for the adjustment.

An appropriate adjustment can take many different forms, depending on the needs of the individual requesting it. It is important that discussions are held with the person requesting the adjustment to gain a greater understanding of their needs and what adjustment would be appropriate.

Question 8: Who has to pay for appropriate adjustments and do they have to be made in all circumstances when a request is received?

Answer 8: Under the draft proposals accommodation providers are under a duty to pay for appropriate adjustments for anything which does not involve physical alterations to the fixed features of a building. An adjustment does not have to be made if it would be a 'disproportionate burden' on the accommodation provider. What is disproportionate depends on the context. This means that whether or not an accommodation provider would be required to make an appropriate adjustment depends on a judgement call. The accommodation provider would need to decide whether what was being asked for was disproportionate.

When considering whether providing an adjustment is a disproportionate burden, if a complaint were to be made, the Committee is proposing that the Tribunal would consider how the adjustment may benefit or be detrimental to any person concerned (not just the person requesting it); the financial circumstances of the accommodation provider and the costs of the appropriate adjustment, and availability of financial and other assistance.

Question 9: What if a change is required to the physical features of a property to meet a disabled person's needs?

Answer 9: The Committee is proposing that accommodation providers should have a duty not to unreasonably refuse to allow a tenant to make a change to the physical features of a building for accessibility purposes. The accommodation provider may specify that this is to be made at the tenant's own expense and that they must agree, and have the resources available, to return the building to the original condition at the end of their tenancy.

As well as an assessment about the feasibility of restoring the property to its original condition, and the desirability of this, the length of a tenancy would also feature in an assessment of whether an accommodation provider was unreasonable to refuse permission for a tenant to make an adaptation. It might be reasonable, for example, to refuse a tenant with a very short lease permission to undertake substantial building works. The accommodation provider may specify other reasonable conditions in relation to giving permission for work to be undertaken (for example, that the work be undertaken by professional tradespersons). Failure to comply with such conditions could be considered a breach of tenancy.

Question 10: I have heard about an ‘anticipatory accessibility duty’. Does this apply to accommodation providers?

Answer 10: The anticipatory accessibility duty is a proactive duty whereby common access needs and impairments must be considered in advance when designing or managing services or facilities. This duty is not applicable to accommodation providers and only applies to education providers and providers of goods or services.

Question 11: How would the legislation apply to commercial landlords where their tenant is a provider of goods or services or education?

Answer 11: In a commercial setting questions relating to the physical building may arise if a service user requests an appropriate adjustment to physical aspects of a premises occupied but not owned by the service or education provider. It is intended that if it were not a disproportionate burden the service or education provider would need to make the alteration subject to obtaining the landlord’s permission to make the alteration (as applicable under their tenancy agreement). However, again the landlord could not unreasonably refuse. The cost would be borne by the service or education provider rather than the landlord. Normal planning and building control requirements would apply and both the landlord and the service provider would be protected if plans for the adjustment were not approved by the Development and Planning Authority in any form.

The Committee has proposed that there should be an ‘anticipatory accessibility duty’ for providers of goods or services and education providers to proactively consider and plan for meeting the most common accessibility needs of disabled people who use their services. Further information about this proposed duty can be found in section 6 of the Committee’s Technical Draft Proposals document available at www.gov.gg/discriminationconsultation.

Although it is proposed that the anticipatory accessibility duty should not apply to landlords, a provider of goods or services or an education provider that occupies a rented property may want to make alterations to that property in response to the duty. In these circumstances it would be up to the goods or services provider or education provider (i.e. the tenant) to proactively consider the most common accessibility needs of their service users and to prepare an accessibility action plan to explain how and when

such needs will be addressed. This may or may not involve physical alterations to buildings and again, would only need to be made if the change was not a disproportionate burden on the duty-bearer. In these circumstances, under the proposals out for consultation, it would be for the providers of goods or services or education to make and pay for the alterations. Again, the landlord would be under a duty not to unreasonably refuse permission for the works.

Question 12: When can an accommodation provider use a protected ground to act on or make a decision?

Answer 12: There are a number of ways an accommodation provider can legitimately treat people differently based on the protected grounds. These include in relation to:

- positive action – taking positive measures or giving preferential treatment provided that the action is adopted with a view to ensuring full equality in practice, subject to meeting one of the criteria set out in section 3.7.2 of the Committee’s ‘Technical Draft Proposals’ document,
- the provision of an appropriate adjustment (which is not discrimination against a person who does not need that adjustment),
- a denial of an appropriate adjustment which would be a disproportionate burden for the accommodation provider to provide, as stated above,
- a failure to provide an appropriate adjustment, or discrimination arising from disability where an accommodation provider did not know and could not be reasonably expected to know the person was disabled,
- indirect discrimination, direct age discrimination or discrimination arising from disability, which can be objectively justified. Objective justification is when different treatment may be deemed to be acceptable, if an accommodation provider can demonstrate that the difference in treatment has a legitimate aim and that the means of achieving that aim are appropriate and necessary,

- where the action falls within one of the listed exceptions in the draft proposals.

Question 13: What is an exception and which of the proposed exceptions are relevant to landlords?

Answer 13: An exception is where different treatment of people with protected grounds 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. The draft proposals include a list of proposed exceptions that the Committee consider to be necessary and the ones of relevance to accommodation providers are listed below:

- 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.
- Organisations managing religious buildings, such as places of worship, may take their religious ethos into account in lettings policies.
- 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).
- 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.
- 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.

- If someone providing communal accommodation¹ 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.
- 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.
- Accommodation providers must appropriately take into account population management requirements; to do so would not be discrimination for the purposes of the proposed legislation.

¹ For the purposes of the discrimination legislation, '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.