

Consultation: Draft Proposals for New Discrimination Legislation



Committee *for*
Employment & Social Security

19 August 2019

Why new legislation?

- States resolutions:
 - Disability & Inclusion Strategy, November 2013
 - Amendment – June 2018 – expansion to multi-ground work
- Policy objectives – equality, inclusion, reputation
- International obligations
 - UN Conventions already extended
 - UN Conventions we are seeking to extend



Legislation in force – 2021?

Preparing for implementation -
legislation drafted,
organisations set up, etc

States debate – by April 2020

Public consultation –
closes 30 September

Overview: draft proposals

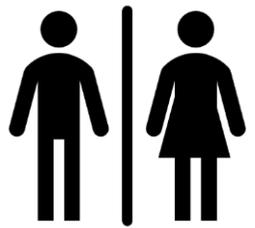
sexual orientation



race



sex



religion



disability



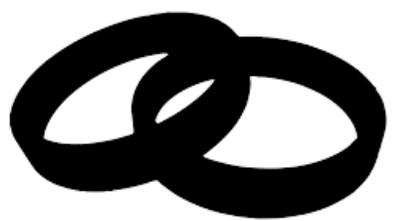
carer status



trans status



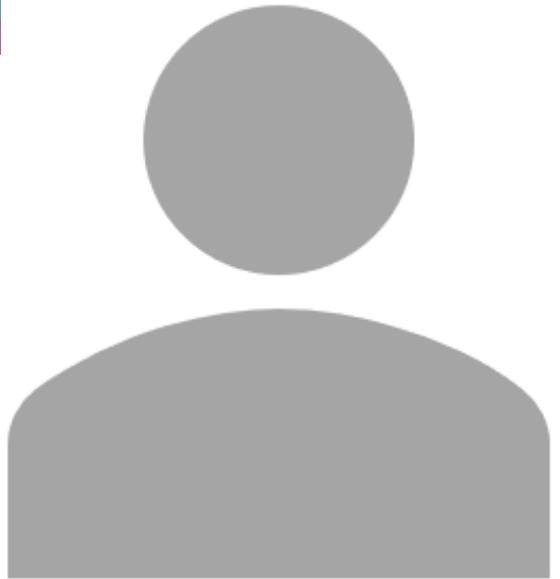
marital status

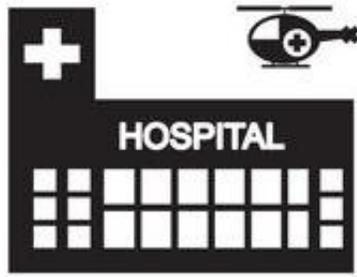


age



pregnancy





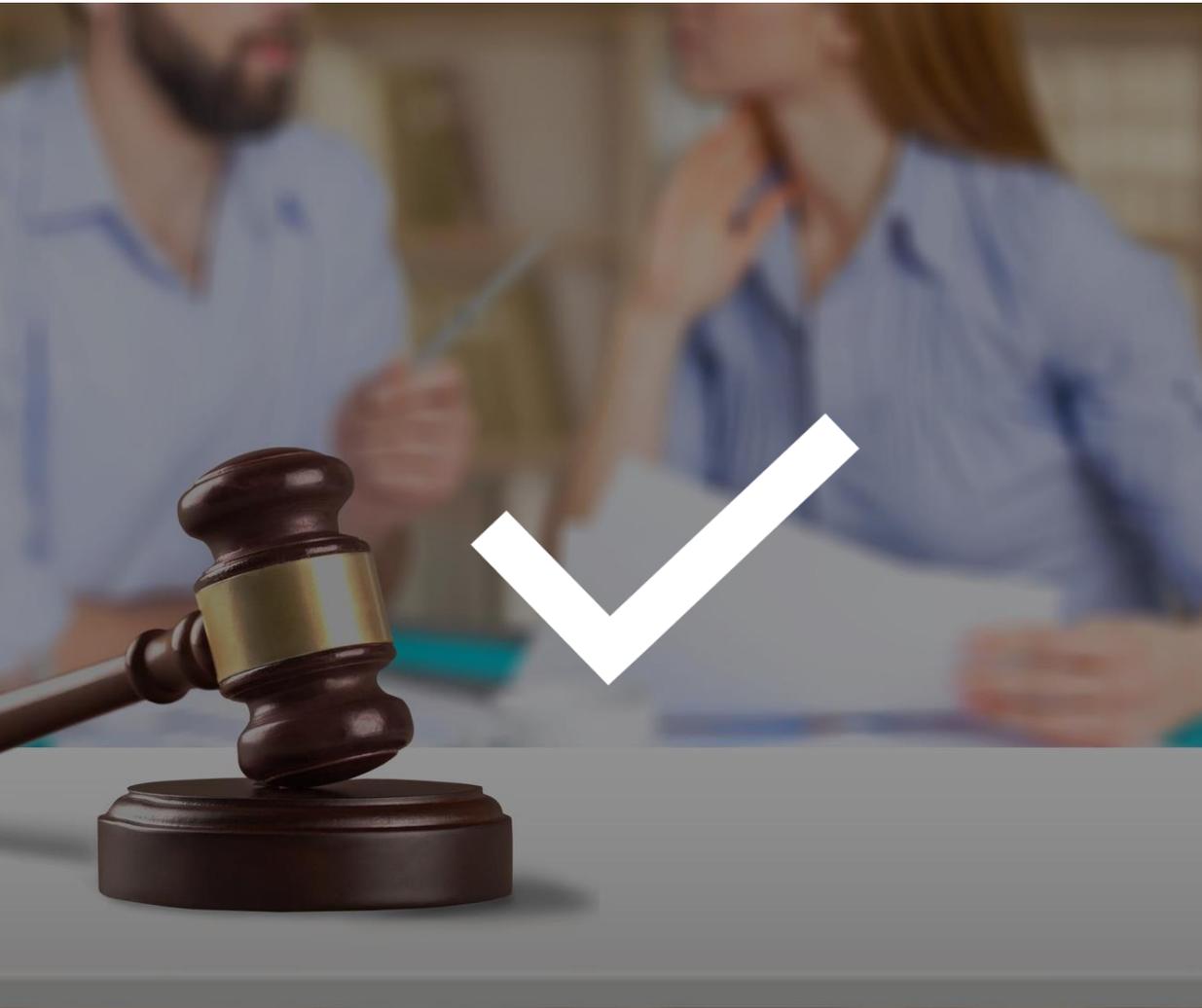


Key questions

- Definition of disability
- Age discrimination and young people
- Families in rental accommodation
- Relationship of trans status and sex grounds

Civil Law

Criminal Law



Types of unlawful discrimination

- Direct discrimination
- Discrimination by association
- Discrimination arising from disability
- Indirect discrimination
- The denial of an appropriate adjustment

Other prohibited conduct

- Harassment
- Sexual harassment
- Discriminatory advertisements
- Victimisation
- Instructions or pressure to commit a prohibited act

Lawful different treatment or disadvantage

- There is an explanation not related to a protected ground
- A person cannot do the essential functions of a role
- Positive action
- Objective justification
- Exceptions

Objective justification

- Must be a legitimate aim
- The means of achieving the aim must be appropriate and necessary (i.e. proportionate)
- When can it be used:
 - Indirect discrimination
 - Discrimination arising from disability
 - Genuine and determining occupational requirements
 - Not applicable to direct discrimination other than age

Exceptions

- Legislation will mean you can't treat people differently related to protected grounds.
- Exceptions for well justified or necessary circumstances.
- Examples:
 - Reduced ticket prices for families or older people
 - Men's, under 21, Guernsey football team
- **We have published a list of proposed exceptions.**



Key question

Do we have the exceptions list right?

We recommend:

- You think about **when you use the protected grounds** in the management of your business, service, association etc.
- You **let us know** if something you want to keep doing is not included in the exceptions list

What is an 'appropriate adjustment'?

- To ensure **equality of opportunity** for disabled people, not special treatment.
- Necessary and appropriate modifications or adjustments 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.
- Implementation of an appropriate adjustment should always follow **consultation** with the individual concerned.

Examples of 'appropriate adjustment'

Many adjustments cost very little. Could include:

- Making changes to facilities or buildings to make them more accessible
- Making information accessible
- Modifying equipment
- Reorganising activities
- Rescheduling work
- Adjusting curricula, learning materials and teaching strategies
- Adjusting medical procedures
- Enabling access to support personnel

Anticipatory Accessibility Duty

- Duty means providers of education and providers of goods or services would have to:
 - carry out an **access audit**;
 - develop an **Accessibility Action Plan** (appropriate and proportionate); and
 - take steps to **implement** the plan.
- Plan should **prioritise** – you don't have to do everything at once. Review every 5 years.
- Audit will compare to **best practice standards** – including Part M of Building Regulations

Appropriate adjustments

Anticipatory Accessibility Duty

| Respond to individual | Proactive – inclusive design |
|----------------------------------------------------------------|--------------------------------------------------------------------------------|
| Specific to individual needs | About needs which might arise reasonably frequently |
| Must consider adjustment unless disproportionate burden | Must develop and implement an appropriate and proportionate action plan |
| Form of discrimination | Not a form of discrimination – but might be used in evidence |
| Enforced by individual | Could be enforced by a compliance notice |
| All fields (except structural alterations to accommodation) | Only in education provision and goods and services provision |

Equal Pay





Key questions

Should some of the parts of the law be phased in?

In particular, is a delay needed in relation to:

- the anticipatory accessibility duty
- equal pay for work of equal value

Complaints process

- Raise with employer/service provider first
- Free advice available for complainant and employer/service provider
- Register complaint with the Secretary to the Employment & Discrimination Tribunal
- Conciliation offered
- Case heard by Employment & Discrimination Tribunal
- Appeal on point of law to Royal Court

Awards and Remedies

Financial compensation

- Financial loss
- Injury to feelings

Not linked to pay

Proportionate to what someone has experienced

Non-financial remedies

- Order for equal treatment
- Order that a person take a specified course of action
- Re-instatement
- Re-engagement



Key question

Should there be an upper limit to the amount of compensation that an employer or service provider would be required to pay?

Equality and Rights Organisation

- Disability and Inclusion Strategy 2013: States agreed the principle of establishing an “Equality and Rights Organisation” which was envisaged as:
 - an independent statutory organisation
 - covering both equality and broader human rights
- **We are currently developing a business case for this organisation.**

What might an Equality and Rights Organisation do?

- Education and awareness raising
- Advice about equality and human rights
- Codes of practice
- Research and monitoring of equality and human rights issues
- Investigations and action to ensure people comply with their responsibilities
- Support to people to bring cases



Key questions

What functions would be most important to include in the mandate of an Equality and Rights Organisation?

Where would you feel most comfortable obtaining advice on discrimination issues?

The consultation

Public Consultation
**Discrimination
Legislation**

Sabiedriskā apspriešana
**Diskriminācijas
novēršanas
tiesību akti**

Technical Draft
Proposals

priekšlikumu
projektu kopsa



 Committee for
Employment & Social Security

Discrimination legislation: draft proposals
Frequently Asked Questions
Employers and service providers

Last updated: July 2019

This leaflet has been created in order to answer
have been asked to date regarding the discrimi
proposals.

The content of this leaflet explains what it v
service providers **if** the proposals for discrim
by the States in their current form. The d
consultation and could be amended as a
States. Consequently, this leaflet provid
proposals and does not constitute adv
contain, as this may change.

More information, as well as an opp
proposals, is available online at [www](#)

Question 1: How long do I have to

Answer 1: The Committee is aim
debate by April 2020
would need to be p
final agreement. T
that everything is
to hear cases. Th
2021.

 2. What discrim

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Summary of
Draft Proposals

 States of
Guernsey

July 2019

Public Consultation
**Discrimination
Legislation**



How can I find out more and respond to the consultation?

Please respond by 30 September 2019

www.gov.gg/discriminationconsultation

equality@gov.gg

Other events

- Chamber of Commerce 'Lunch and Learn'

10 September 12:00-14:00

Book you place at <https://www.eventbrite.com/e/lunch-learn-on-proposed-new-discrimination-law-free-to-members-tickets-65101578574>

- Small business focus group meeting

18 September - 19:00 to 21:00 (provisional)

Email equality@gov.gg to register to attend