

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

PROPOSALS FOR A NEW DISCRIMINATION ORDINANCE

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Proposals for a New Discrimination Ordinance" (dated 2nd March, 2020), they are of the opinion:-

1. To agree to the preparation of an Ordinance, under the provisions of section 1 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 in relation to the prevention of discrimination on the grounds of disability, carer status and race in accordance with the policy proposals set out in this Policy Letter.
 - 1A. To agree that prevention of discrimination on the ground of **sexual orientation** (meaning, in accordance with the Committee *for* Employment & Social Security's Technical Proposals of July 2019, "a person's sexual orientation towards persons of the same sex, or persons of a different sex, or persons of the same sex and persons of a different sex") shall be included within the Ordinance prepared in accordance with Proposition 1.
 - 1B. To agree that prevention of discrimination on the ground of **religious belief** (meaning, in accordance with the Committee *for* Employment & Social Security's Technical Proposals of July 2019, "a person's religious belief, which includes their religious background or outlook, and also includes not having a religious belief") shall be included within the Ordinance prepared in accordance with Proposition 1.
 - 1C. To direct the Committee *for* Employment & Social Security to report back to the States as soon as possible in the next States term with a policy letter on the proposed exceptions for the grounds of sexual orientation and religious belief and that this should take place in parallel to the legislative drafting of the new Ordinance.
2. To agree that:
 - a. with the exception of the provisions referred to in paragraphs b. and c. below, the Ordinance referred to in Proposition 1 ("the Ordinance") shall come into force six months after its approval by the States,

- b. the provisions in the Ordinance relating to discrimination complaints in the field of education shall come into force on a date to be appointed by regulations made by the Committee *for* Employment & Social Security, which date shall be after the date on which the Ordinance comes into force pursuant to paragraph a. above, and
 - c. the provisions in the Ordinance relating to a duty to make changes to physical features shall come into force on a date to be appointed by regulations made by the Committee *for* Employment & Social Security, which date shall be at least five years after the date on which the Ordinance comes into force pursuant to paragraph a. above.
3. (i) To direct the Committee *for* Employment & Social Security to bring detailed policy proposals to expand the grounds covered in the Ordinance referred to in Proposition 1 to the States for consideration, in accordance with the following timeline:

Completion of Phase 1

- **2021 – Training Stage:** Provision of training and information, etc, in respect of Phase 1 as approved by the States.
- **2022 – Implementation Stage:** Enactment of legislation in respect of Phase 1.

Delivery of Phase 2

- **2023 – Phase 2 policy letter:** Protection on the ground of age. Modernisation of the existing Sex Discrimination Ordinance. Equal pay for work of equal value. Consideration of multiple and intersectional discrimination. Protection on the grounds of religious belief and/or sexual orientation, if not incorporated in Phase 1 (by virtue of Propositions 1A or 1B).
- **2024 – Training and implementation:** Ordinance including Phase 2 grounds brought to the States for approval and implemented (with six-month lead-in period as in Phase 1). Training on new grounds of protection rolled out.

Specific Lead-In Periods

- **2026 – Discrimination in Education:** In accordance with Table 8.6.1 of the policy letter, provisions relating to discrimination in education come into effect no later than 2026.
- **2027 – Accessibility and Equal Pay:** In accordance with Table 8.6.1 of the policy letter, the final provisions of the Ordinance (relating to public sector accessibility action plans; complaints in respect of changes to physical features; and implementation of equal pay for work of equal value) come into effect.

Evaluation

- **2029 – Post-Implementation Review:** To take place no more than two years after all provisions of the Ordinance are in force. May take place sooner if required.
- (ii) To direct the Policy & Resources Committee to ensure that the Committee *for* Employment & Social Security is provided with sufficient resource, through its annual budgets and/or through the provision of shared States' resources, to deliver the remaining policy and drafting work within the timeframe set out in Proposition 3.

Or, should Proposition 3. not be carried,

- 3A. (i) To direct the Committee *for* Employment & Social Security to bring detailed policy proposals to expand the grounds covered in the Ordinance referred to in Proposition 1 to the States for consideration. This should be in **three Phases**, in accordance with the proposals and timeline set out as follows:

Implementation of phase 1

- **2021 – Training stage:** Provision of training and information, etc, in respect of phase 1, as approved by the States.
- **2022 – Implementation of phase 1:** Enactment of Ordinance in respect of phase 1.

Phase 2

- **2023 – Phase 2 policy letter returns to the States:** Setting out policy proposals in respect of the grounds of age and, if not in phase 1, religious belief. Also including consideration of multiple and intersectional discrimination.
- **2024 – Implementation of phase 2:** Amendment Ordinance, adding phase 2 grounds of protection to the new Discrimination Ordinance, to be brought to the States for approval and to enter into force.

Phase 3

- **2025 – Phase 3 policy letter returns to the States:** Setting out policy proposals in respect of sexual orientation (if not in phase 1) and the grounds covered in the existing Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (i.e. sex, marital status, gender reassignment, and pregnancy and maternity (with any appropriate updates in the framing of those grounds)). Also including proposals to introduce a legal right (from 2027) to equal pay for men and women workers for work of equal value.

- **2026 – Implementation of phase 3 (excluding equal pay for work of equal value):** Amendment Ordinance, adding Phase 3 grounds of protection to the new Discrimination Ordinance, to be brought to the States for approval and to enter into force.

Entry into force in respect of some provisions

- **2026 – Discrimination in education:** Provisions relating to discrimination in education to come into force no later than 2026.
- **2027 – Accessibility action plans, complaints relating to a “physical feature” of a building and equal pay for work of equal value:** The final provisions of the Ordinance relating to (i) the requirement for public sector goods, services and education providers to prepare accessibility action plans in relation to the public-facing aspects of their services; (ii) the ability to bring discrimination complaints relating to a “physical feature” of a building, and (iii) the introduction of the right to equal pay for men and women workers for work of equal value come into effect.

Review

- **2029 – Post-implementation review:** To take place no later than two years after all provisions of the Ordinance are in force. May take place sooner if required.
- (ii) To direct the Policy & Resources Committee to ensure that the Committee *for* Employment & Social Security is provided with sufficient resources, through its annual budgets and/or through the provision of shared States’ resources, to deliver the remaining policy and drafting work within the timeframe set out in this Proposition.
4. To note the Committee *for* Employment & Social Security’s intention to recommend, in accordance with the timetable set out in Proposition 3 or 3A (as the case may be), the introduction of the right to equal pay for work of equal value in respect of sex, in accordance with the International Covenant on Economic, Social and Cultural Rights and in order to support the extension of the Convention on the Elimination of All Forms of Discrimination Against Women.
 5. To direct the Committee *for* Education, Sport & Culture and the Committee *for* Employment & Social Security to work together to develop an appropriate adjudication mechanism for complaints with respect to disability discrimination in schools and preschools and for any discrimination complaints relating to States’ school admissions and to note that any request for additional funding for this purpose will be submitted through the appropriate budget setting

process.

6. To approve the transfer from the Budget Reserve to the 2020 revenue expenditure budget of the Committee *for* Employment & Social Security:
 - a. of £90,000 to fund an increase in the capacity of the Employment Relations Service, developing Rules of Procedure and a rolling training programme for the Employment and Discrimination Tribunal, programme management, and beginning to develop guidance and a code of practice, and
 - b. of £40,000 for conducting a survey on prejudice and discrimination and beginning to develop an approach to address issues identified through the survey (noting that the request for b. stands, even if the preparation of the Ordinance is not approved, in order to promote equality and prevent discrimination via cultural change).

7. To direct the Policy & Resources Committee to include specific additional funding in the recommended Cash Limits of the Committee *for* Employment & Social Security:
 - a. to fund the Employment and Equal Opportunities Service and the Employment and Discrimination Tribunal, estimated at £200,000 in 2021; £305,000 in 2022; and £325,000 from 2023 onwards, and
 - b. to fund proactive work to raise awareness and change attitudes in relation to prejudice and discrimination in the community, estimated at £45,000 per annum (noting that the request for b. stands even if the preparation of the Ordinance is not approved in order to promote equality and prevent discrimination via cultural change).

8. To approve the allocation from the Transformation and Transition Fund, or other source deemed appropriate by the Policy & Resources Committee, of £395,000 to fund project set-up costs and awareness raising about the legislative changes between 2021 and 2023.

9. To instruct Property Services to find suitable office accommodation for the Employment and Equal Opportunities Service to move to.

10. To amend the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 to require Tribunal Chairs to be legally qualified, as set out in section 7.4.3 and appendix 6.

11. To prepare legislation outlining the powers and functions of the statutory official who will lead the Employment and Equal Opportunities Service and to amend existing employment and discrimination legislation in order to transfer any relevant powers to that statutory official (as outlined in section 7.4.2 and appendix 6).

12. To amend existing employment and discrimination legislation to ensure that a consistent approach is taken to offering pre-complaint conciliation with regards its effect on suspending the time limit for registering complaints and to enable other relevant time limits to be amended as may be considered appropriate.
13. To note the Committee *for* Employment & Social Security's intention to introduce Rules of Procedure for the Employment and Discrimination Tribunal by Order under the provisions of paragraph 3 of the Schedule to the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.
14. To amend the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 to ensure, so far as appropriate, that the limits for financial compensation in that Ordinance are consistent with the limits set out in this Policy Letter and, so far as may be appropriate, to ensure consistency between the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 and the Ordinance with respect to civil penalties and criminal offences, as set out in section 10 and appendix 4.
15. To note that the Committee *for* Employment & Social Security shall have the power to prescribe by Regulation, inter alia:
 - a. exceptions to the Ordinance,
 - b. what is and is not a "physical feature" for the purposes of the Ordinance, and
 - c. when tenants can request improvements to accommodation in relation to the rights of tenants in residential accommodation.
16. To note that the Committee *for* Employment & Social Security will bring proposals to the States for the establishment, operation and funding of an "Access to Work Scheme" by the end of 2021 (see section 7).
17. To agree that policy work on the outdated legislation and the policy and legislation gaps identified in section 9 should be considered for prioritisation through the Future Guernsey Plan in the next States' term, and specifically to agree:
 - a) that the birth registration process in Guernsey:
 - Should be capable of recognising and giving equal treatment to diverse family types, including same-sex couples, unmarried couples and single parents, as well as married opposite-sex couples;
 - Should be consistent with the child welfare principles of the Children (Guernsey) Law, 2008;
 - Should not include the concept of "illegitimacy"; and
 - Should not discriminate between parents on the basis of sex or on any other basis;

- b) that the Policy & Resources Committee, in consultation with the Committee *for* Employment & Social Security and the Committee *for* Health & Social Care, should prioritise work to modernise the existing birth registration legislation, and return to the States with proposals no later than December 2021; and
 - c) that the Policy & Resources Committee should consult with the States of Alderney to explore whether they would wish these proposals also to extend to Alderney.
18. To repeal the discriminatory provisions relating to women in the following legislation, as set out in section 9.5:
- Loi ayant rapport á L’emploi de femmes, de jeunes personnes et d’enfants, 1926,
 - The Quarries (Safety) Ordinance, 1954,
 - The Safety of Employees (Growing Properties) Ordinance, 1954,
 - The Safety of Employees (Miscellaneous Provisions) Ordinance, 1952.
19. To direct the preparation of such legislation as may be necessary to give effect to these Propositions, including consequential amendments to other legislation.
20. To direct the Committee *for* Employment & Social Security to conduct a post-implementation review of the effectiveness of the legislation for individuals, employers and service providers no later than two years after the implementation of the final phase of the legislation (including changes to physical features coming into effect), or earlier if there are significant issues with respect to the operation of the legislation.
21. To direct Policy & Resources to submit a policy for approval by the States in respect of the drafting of all documents including legislation, which:
- a) requires gender-neutral drafting of all documents including legislation in respect of both its effect and the words used in the document, and
 - b) requires that, when legislation or long-term policy documents are updated, gender-neutral language should be used and offensive terms to describe disability or any other protected ground should be replaced;

and that such a policy shall be binding on all documents produced by States’ Committees, their Offices and third parties which are contracted to provide services to the States including the provision of the service of the drafting of legislation.