

Guernsey's new Prevention of Discrimination (Guernsey) Ordinance: Are you ready to meet the requirements

Insights - 11/11/2022

The States of Deliberation (the **States**) approved the new Prevention of Discrimination (Guernsey) Ordinance, 2022 on 28 September. Employers will have a year to make any necessary preparations, with confirmation that the Ordinance will come into force on 1 October 2023 (subject to approval from the States).

Under the new legislation, employers will have increased statutory obligations and a wider range of characteristics will be protected against discrimination so businesses will need to check their employment contracts and staff policies to ensure that they are aligned with the new requirements.

The Ordinance incorporates changes into the existing anti-discrimination regime and extends the scope of the law from the employment field to cover those who provide goods and services, schools and education providers, clubs and associations and accommodation providers. The Ordinance also introduces a positive duty on employers and service providers to make reasonable adjustments for a disabled person.

The new protected grounds are:

- Disability;
- Carer Status;
- Race;
- Sex orientation; and
- Religion or belief.

The key principles underpinning the legislation are fairness, equality, justice, dignity and

proportionality.

A number of amendments were debated by the States and the outcome of some of the more significant changes to the Ordinance are set out below to give employers time to digest them, and ensure they are fully prepared for any changes that they might need to make.

Amendments adopted

Amendment 2 (religion or belief)

The protected ground of "religious belief" has been expanded to "religion or belief". A philosophical belief (or lack of a belief) which is not based on religion is now potentially protected from discrimination under this protected ground.

Amendments 3 and 17 (amendments, code of practice and guidance)

While amendments and codes of practice made under the Ordinance will have to be approved by the States (by Regulation) before coming into effect, the Committee for Employment & Social Security will be allowed to issue non-statutory guidance to explain people's rights and duties under the Ordinance, including information about what is required in an accessibility action plan.

Amendment 14 (contract of employment definition)

A narrow definition of '*contract of employment*' was proposed to explicitly exclude a contract for services. The definition was amended to clarify that it means only '*a contract of service or apprenticeship, whether express or implied and whether written or oral*'.

Amendment 12 (professional skills and qualifications)

Clarification has been added so that '*for the avoidance of doubt*' a professional body does not discriminate against a person by imposing requirements to possess relevant skills, experience, professional integrity or require the passing of examinations.

Amendment 7 (immigration and population management)

Decisions taken in respect of immigration applications, clearance and leave to enter or remain in Guernsey will not be required to be "necessary for the public good" to fall within the exception. The requirement that actions taken for the purpose of Population Management must be "a proportionate means of achieving a legitimate aim" to fall within the exception has also been removed.

Amendment 9 (freedom of expression)

An exception relating to freedom of expression has been included to clarify that an expression of

an opinion, political view, religious belief or any implied or actual view or position on any subject does not by and of itself constitute an act of discrimination prohibited by the Ordinance, except in relation to victimisation or harassment.

Amendment 16 (compensation for victimisation)

The new law will allow the Tribunal to award compensation for victimisation over and above the maximum award limit for joined complaints for the following reasons:

- victimisation is intended to discourage complaints;
- seeks to underdetermine legislation; and
- victimisation is likely to be an intentional act.

Rejected Amendments

Not all of the proposed amendments were accepted. Some of the more notable amendments that were rejected are listed below.

- A small business exception, for businesses with five or fewer employees from the duty to make reasonable adjustments for a disabled person and the proactive duty of service providers, schools and education providers in respect of disabled persons generally;
- Removal of specific protection in respect of equal pay;
- Reduction of the amount of compensation for 'discriminatory pay' from six years to three years pay arrears;
- Reduction of the maximum amount of compensation, payable for injury to feelings, hurt or distress from £10,000 to £5,000.

A copy of the Ordinance and amendments can be found at [The Prevention of Discrimination \(Guernsey\) Ordinance, 2022 - States of Guernsey \(gov.gg\)](https://www.gov.gg/legislation/the-prevention-of-discrimination-ordinance-2022)

Ogier hosted [a seminar on 22 September 2022](#) whereby the Employment Team discussed the requirements and obligations set out in the new Ordinance.

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