

**Guernsey  
Disability  
Alliance**



Equality - Dignity - Inclusion

# Preventing disability discrimination workshop 2

Disability discrimination legislation – key issues  
and concepts

## Aims of the meeting

- Recap of part one sessions & clarification from first session.
- Understand the stages involved in developing the legislation
- Explore and gain understanding of the main issues yet to be resolved in developing our future discrimination legislation
- Understand the right, disabled people have, to be actively involved and closely consulted about the legislation, and the impact our exercising of this right has had

## Tools for preventing discrimination

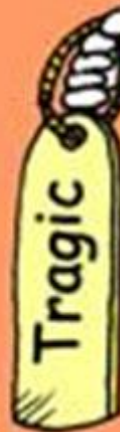
- CRPD – “The workshop manual”
- Policy
- Legislation:
  - prohibit discrimination
  - promote and protect rights (PSED)
  - accessibility standards (Regulations) (need to review existing legislation)
- Awareness raising, through:
  - Education, primary & secondary
  - Equality & Rights Organisation (ERO)
  - Media - compliance with Article 8.2

# Article 1 CRPD - Purpose

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Come along now,  
one more label and  
you're ready to  
face the world!


Guernsey  
disability label  
store



**Crippen**

**How would you like  
your face smashed in?**

**Clunk-Click**



## Tools for preventing discrimination

- CRPD – “The workshop manual”
- Policy
- Legislate to:
  - prohibit discrimination
  - promote and protect rights (PSED)
  - Accessibility standards (Regulations)(need to review existing legislation)
- Awareness raising, through:
  - Education, primary & secondary
  - Equality & Rights Organisation (ERO)
  - Media - compliance with Article 8.2
  - NGOs (GET, LIBERATE, GDA, etc)
  - Audit of States’ responsibilities
- Ourselves

# Legislation – what decisions have been made so far?

- In 2013, the States of Guernsey resolved to develop legislation to;
  - prevent discrimination against disabled people and carers and,
  - provide equality of opportunity.
- In 2013, the States of Guernsey, by resolving to seek extension of the CRPD to Guernsey, stated its intent to abide by the principles of the Convention.
- In March 2018, the Committee *for* Employment and Social Security decided to base Guernsey's future legislation on legislation from Ireland and Australia



## Further stages of legislation development

1. The Committee *for* Employment and Social security (ESS) decides scope of protected grounds.
2. Initial review of Australian and Irish model legislation and identification and procurement of resources required for tailoring phases.
3. Develop policy proposals to tailor model legislation (Experts, Project team & GDA reps included in discussions).

*[ERO business case likely to be finalised ahead of the public consultation on the proposals for the legislation]*

4. Public consultation
5. Policy Letter drafted.
6. Policy Letter finalised and submitted to the Greffe
7. Policy Letter goes to the States Assembly for approval/amendment

## Further stages of legislation development continued...

8. Legislation prioritised by P&R for drafting (may try to bring this stage forward)

Simultaneously:

- Legislation drafted based on agreed Policy Letter/amendments
- Enforcement mechanisms to handle complaints developed (as per Policy Letter and ordinance)
- Training and guidance developed & provided to relevant parties (business community, HR community, States of Guernsey)

9. Draft Legislation (assuming it will be an ordinance) returns to the States for approval.

10. Ordinance approved, including agreement of a date(s) various provisions come into force.

11. Legislation goes live on agreed date(s) (when sufficient training completed and enforcement mechanisms in place).

A law or an ordinance?  
- and what's the difference?

# The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

This Law also allows the States of Guernsey, by ordinance, to:

- make any provision to prevent discrimination
- decide on grounds to be protected
- set powers of courts and tribunals
- set modes of enforcement
- set remedies
- establish a tribunal
- establish an Equality and Rights Organisation
- give power to any body to make regulations, rules or orders
- give any provision of an international agreement legal effect in Guernsey (with regard to prevention of discrimination)

# What may be included in disability discrimination legislation?

- Scope: Fields of operation and protected grounds
- Prohibited discriminatory acts
- Definitions – disability (who protected)
- Awards & other remedies
- Required acts - duty to promote equality
- Accessibility – duty to remove/avoid barriers
- Objective justification of indirect discrimination
- Complaint administration, resolution and enforcement
- Grant of powers (develop guidance, investigation, develop regulations, impose orders, etc)

# Grounds to be protected

- just disability, or
- many grounds from start, or
- many grounds - phased introduction?

Note: CRPD requires laws must allow complaints on multiple grounds and must take account of intersectional discrimination

GDA resists employment only  
model (2015)

# Fields of operation

- The Convention requires States to combat discrimination in all fields, including social, economic, political, and cultural fields.
- As a minimum, the UK requires that our legislation must protect in the fields of employment, access to goods and services, and education.



# Commonly prohibited acts of discrimination

- Direct\* and indirect discrimination\*,
- failure to accommodate need\* (make reasonable adjustment),
- Harassment\*,
- victimisation,
- Other: Pre-employment health questions, discriminatory advertising, etc

\* Required by CRPD and law must allow complaints on multiple grounds and consider intersectional discrimination.

GDA rejects medical model  
definition of disability  
(2014/15)

# Definition of disability (UK Equality Act, 2010)

A person has a disability if he/she has a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to do normal day-to-day activities.

# Medical model definitions

## “A windfall for defendants”

- A quarter of complaints under UK, DDA 1995 failed because complainants could not prove disability.
- 93% of complaints made against employers under the ADA 1990 were unsuccessful.

# The concept of disability

“...disability is an evolving concept...  
Disability results from the interaction  
between persons with impairments and  
attitudinal and environmental barriers that  
hinders their full and effective participation in  
society on an equal basis with others”

CRPD Preamble (e)

## Definition – CRPD Committee General Comment – Article 5 (Equality & Non- discrimination)

“... Persons... should not be burdened by proving that they are “disabled enough” in order to benefit from the protection of the law. Anti-discrimination law that is disability-inclusive seeks to outlaw and prevent a discriminatory act rather than target a defined protected group. In that regard, a broad impairment-related definition of disability is in line with the Convention”.

## Definition – Committee general Comment – Article 5 (Equality & Non-discrimination)

“laws... should include past, present, future and presumed disabilities, as well as persons associated with persons with disabilities.”

# What may be included in disability discrimination legislation?

- Scope: Fields of operation and protected grounds
- Definitions – disability (who protected), associate, carer, etc
- Prohibited discriminatory acts
- Required acts – e.g duty to promote equality and respect for rights and freedoms
- Accessibility – duties on various parties to remove/avoid barriers
- Objective justification of indirect discrimination
- Complaint administration, resolution and enforcement
- Awards & other remedies
- Grant of powers (develop guidance, investigation, develop regulations, impose orders, etc)



# Awards

- Jersey max for actual loss and hurt & distress £10,000
- Guernsey Sex Discrimination Ordinance formula, 3 month's pay
- UK Equality Act, unlimited

**guernseydisability**  
alliance



**Human Rights**  
**teach 'em**  
**don't breach 'em**

Spare slides

# Definition of disability – Australian Disability Discrimination Act 1992

- **disability**, in relation to a person, means:
  - (a) total or partial loss of the person's bodily or mental functions;  
or
  - (b) total or partial loss of a part of the body; or
  - (c) the presence in the body of organisms causing disease or illness; or
  - (d) the presence in the body of organisms capable of causing disease or illness; or
  - (e) the malfunction, malformation or disfigurement of a part of the person's body; or

# Definition of disability – Australian Disability Discrimination Act 1992

- Continued...
  - (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
  - (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;and includes a disability that:
  - (h) presently exists; or
  - (i) previously existed but no longer exists; or
  - (j) may exist in the future (including because of a genetic predisposition to that disability); or
  - (k) is imputed to a person.
- To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

# Detail of significant provisions yet to be decided

- **Definition of disability**
  - who should be protected (from disability discrimination)
- **Scope of protection**
  - protected grounds & approach
  - fields of operation
- **Forms of discrimination to be prohibited**
- **Accessibility & accommodation of need**
- **Financial awards to compensate for**
  - actual loss, and
  - distress and injury to dignity and feelings
- **Administration of justice**

Should our legislation take a unitary approach (all provisions apply to all protected grounds)?

# Definition of discrimination (CRPD Article 2)

“any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation; “



# Significant provisions yet to be decided

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