

Extracts from Discrimination Legislation – List of Proposed Exceptions – July 2019

Introduction

What is this document?

The Committee *for* Employment & Social Security are consulting on a set of draft proposals for new multi-ground discrimination legislation. This document forms part of a set of documents including:

- A questionnaire outlining some of the Committee's key questions
- A summary of the draft proposals
- Frequently Asked Questions documents
- A document with the technical detail of the draft proposals
- An easy read outline of the proposals

These are available at www.gov.gg/discriminationconsultation

This document lists the proposed exceptions to the rule of non-discrimination. You will need to review it in order to answer one of the questions in the questionnaire. You are also welcome to send any comments on the proposed exceptions to us by email at equality@gov.gg.

To be clear, the content of this document is the same as the content of Appendix A and B of the “Technical draft proposals” document.

What are exceptions?

If the discrimination legislation is agreed and comes into force then, as a general rule, any different treatment on the basis of age, carer status, disability, marital status, pregnancy and maternity status, race, religion, sex, sexual orientation or trans status will be unlawful.

However, there will be exceptions to that rule where different treatment 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. For example, one of the exceptions says that services who want to offer discounted tickets to families can continue to do so.

This list sets out our initial proposals about what those exceptions should be. It should be noted that this list might change, both following the consultation and States Debate, and

also at the legal drafting stage – if the legal drafters identify something that is required to make this legislation coherent with other legislation or the legal system in Guernsey.

The exceptions are numbered for ease of reference.

B3 - Carer status

We propose the following exceptions would apply to carer status (in addition to those that apply to all grounds in section B1).

- **Preferential charging (no. 3)** - Preferential fees, charges or rates for carers or people with children would be permissible.
- **Population Management (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may take into account carer status.
- **Household composition for grants, loans, or benefits (no. 10)** - An income assessment for grants, loans or benefits provided by the States of Guernsey may take into account household characteristics or family composition as part of the income assessment.
- **Determinations (no. 11)** - An officer or panel (with delegated authority) may make determinations which take into account carer status in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States of Guernsey or relevant Committee thereof.
- **Providing accommodation proportionate to family size (no. 19)** - If an employer offers accommodation and this is proportionate to the occupant(s) family size this would not constitute discrimination for the purposes of the proposed legislation against employees with a different family size.
- **Family situations (no. 20)** - It would not be considered discrimination for the purposes of the proposed legislation, for employers to:
 - grant individual requests for flexible working arrangements (provided that remuneration, leave and other benefits are equivalent on a pro-rata basis and that the right to request a flexible working arrangement is available to all employees);

- provide benefits in relation to care responsibilities (for children or family members) without this being a disadvantage to employees that do not have those responsibilities (e.g. flexible working, a crèche, priority car parking);
 - provide a benefit to an employee in relation to a family situation, for example, additional paid leave during a period of family illness or following a bereavement, or giving a wedding gift;
 - provide benefits in relation to an employee's family members (e.g. health insurance for a spouse or children) without that being considered a disadvantage for employees who do not have those family members.
- **Carers supporting more than one person (no. 30)** - Where a carer provides care or support for more than one person, an education provider or provider of goods or services may allocate places preferentially to include both or all of the persons for whom care or support is provided. For the purposes of the proposed legislation, this would not be considered discrimination against carers who provide care or support for only one person who was not prioritised for a place. This would cover, for example, a school prioritising the sibling of a child already in attendance over an only child if both are applying for a limited number of places in the same year group.
 - **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
 - **Social housing and housing association allocations (no. 52)** - Social housing providers and housing associations would be able to treat people differently in relation to carer status when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs.

Children in rental properties (no. 58) - There is a question asked about this in our questionnaire. For further discussion see section A13.

B4 – Disability

We propose the following exceptions would apply to disability (in addition to those that apply to all grounds in section B1).

- **Preferential charging (no. 3)** - Preferential fees, charges or rates for disabled people would be permissible.

- **Population Management (no. 9)** - Action taken to give effect, in a proportionate way, to the population management policy adopted by the States of Guernsey and/or the Committee *for* Home Affairs, may refer to disability but only when considering the extension and/or type of permit for people who are already resident (see Part A for further detail).
- **Determinations (no. 11)** - An officer or panel (with delegated authority) may make determinations which take into account disability in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States of Guernsey or relevant Committee thereof.
- **Supported employment (no. 22)** - For the purposes of the proposed legislation, a person may provide supported employment for people with a particular kind of disability without this being considered discrimination against people with other kinds of disability.
- **Different treatment based on assessed needs (no. 27)** - It would not be considered discriminatory, for the purposes of the proposed legislation, for an education provider or authority to offer alternative or additional educational services in order to meet the assessed needs of a student where another student is not offered such services due to a difference in their assessed needs.
- **Admissions policies (no. 28)** - A school may set an entry standard based on ability or aptitude. If an applicant does not meet the required standard for selection, for reasons related to, or in consequence of a disability, and despite appropriate adjustments having been offered or made available where relevant, then they, like other applicants who fail to meet that standard, may be refused a place.
- **Risk (no. 31)** - People who provide personal pensions, annuities, insurance policies or any other services related to the assessment of risk would be allowed to use disability to undertake assessments and vary the service that they provide accordingly (see Part A for further details).
- **Infectious disease (no. 32)** - It would not be discrimination, for the purposes of the proposed legislation, to treat a person differently on the grounds of disability where the disability is an infectious disease, or where an assistance animal has an infectious disease, and different treatment is required for public health reasons.
- **Clinical judgement (no. 33)** - If the difference in treatment of a person is solely based on a medical professional's clinical judgement this would not be discrimination, for the purposes of the proposed legislation. This is not intended to protect medical

professionals from complaints if their use of a protected ground is prejudicial and not clinically relevant.

- **Legal capacity (no. 34)** - We intend to include an exception which will permit difference in treatment where this is necessary in relation to a person's legal capacity status, in alignment with the new capacity legislation being developed.
- **Preventative public health services (no. 36)** - Preventative public health interventions targeted at particular groups would be permissible where this is objectively justified through epidemiological or other relevant data (see Part A for details).
- **Drama and entertainment (no. 48)** - The legislation would permit differences in treatment in relation to disability where this is reasonably required for the purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment (for example, seeking a disabled actor to portray a character with a disability in a play).
- **Sports, games and other competitive activities (no. 49)** - It would not be considered discrimination, for the purposes of the proposed legislation, to exclude a person from a sporting, gaming or competitive activity if the person is not capable of performing the actions reasonably required in relation to the competitive activity (including with an appropriate adjustment). Similarly, it would not be considered discrimination, for the purposes of the proposed legislation, if someone is not selected as part of a team or as a participant if there is a selection process by a reasonable method on the basis of skills and abilities relevant to the competitive activity.

We also intend that it would not be discrimination, for the purposes of the proposed legislation, to treat people differently according to disability in relation to providing or organizing sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant.

- **Social housing and housing association allocations (no. 52)** - Social housing providers and housing associations can treat people differently in relation to disability when allocating accommodation or managing waiting lists based on prioritisation in line with an allocations policy related to people's needs.

