



# GPEG's comments on the second published draft of the Prevention of Discrimination (Guernsey) Ordinance 2022 – September 2022



[info@gpeg.org.gg](mailto:info@gpeg.org.gg)  
[www.gpeg.org.gg](http://www.gpeg.org.gg)

## History

The first draft of the Prevention of Discrimination (Guernsey) Ordinance 2022 – DRAFT (the “proposed ordinance”) was published on the States of Guernsey website in February 2022. After further consultation changes have been made and a second draft published on 20 July 2022 which can be found on the States of Guernsey website [here](#).

We have provided comment throughout the process in the form of the following reports:

- [In April 2021](#) we published a press release detailing what GPEG is doing in relation to the proposed legislation
- [In July 2021](#) we published our full report on the review of the States of Guernsey’s proposals, this included reference to the response to the States of Guernsey public consultation on the proposed legislation by [Voisin Law](#)
- In February 2022 when the States of Guernsey published their first draft of the proposed ordinance, we published an [updated report](#) following the review of the first draft and then [detailed comments](#) on the draft ordinance itself

We have performed a full review of the second draft of the proposed ordinance which is due to be debated by the States of Guernsey in September 2022 and if passed would come into effect in October 2023. This report is as a result of that review. We have also once again provided detailed comments on the draft ordinance document which can be found [here](#).

**Our conclusions remain, this will cause economic harm as well as generating unfriendly employer/employee relationships.**

## Summary

We have been clear throughout this process that we are not against anti-discrimination legislation. What we do not agree with is a disproportionate response to a problem; most particularly in the area of employment. What is needed is a solution that is proportionate and appropriate to the problem and meets the needs of islanders. This legislation is not it.

## Key points

### Issues around consultation process

The facts remain this proposed legislation did not go through the proper process with;

- The lack of effective consultation
- Issues over the adequacy of the 'experts' used
- The costs to the States were not properly costed and grossly underestimated

### Is there a big enough problem?

It is surprising that such drastic Proposals could have been made without any significant evidence of the (a) potential problem and (b) the number of people who could stand to benefit from such legislation. Quite simply, the Government did not identify whether there was a significant problem nor did they attempt to sensibly quantify any such problem. The only clear winners will be employment lawyers.

### The definition of disability is too wide in scope

It is fair to say this definition is revolutionary in flavour, seriously idealistic and readily disputed.

Taken literally the proposed definition of disability for the proposed new Ordinance would have every Guernsey

person defined as disabled. By contrast, the more conventional Medical Model tends to believe that curing or at least managing meaningful illness or disability revolves around identifying the illness or disability from an in-depth clinical perspective, understanding it, and learning to control and/or alter its course. Where improvement or cure cannot be affected then mitigation needs to be applied.

### Public sector costs

One of the main issues remains, the cost of this legislation will be significant and dis-proportionate to the problem it seeks to address.

No effort has been made to realistically assess the costs of these proposals. States rules require an estimate of the financial cost to the States – no reasonable effort has been put into this.

We made an estimate of the **costs to the States of Guernsey in year one to be in the region of £2.4m followed by annual costs of £1.9m** (compared to costs of £350,000 (page 83 of Proposals) but given that introductory training courses on the legislation (funded at unknown and uncoded expense) take up to 7.5 hours, much higher total costs will arise merely for the States in lost staff time. Numbers of **£5m and £3m** are possibly more realistic than our original estimate. The wider impact on the private sector will be a lot more still.

### Private sector costs

With 64% of businesses in Guernsey being small businesses (those numbering 1 to 5 employees) this will have a huge and disproportionate effect on their bottom line.

Raising this threshold to, say, 50 employees would relieve many businesses of a potentially very large burden.

Training provided by the Consortium can add up to 7.5hrs per employee.

It is estimated that for the average mid-sized organisation, the implementation of this legislation could easily cost up to a first-year total of £250,000.

Total annual and set up private sector costs will run into the double figure millions.

### Moral hazard

The impact of such legislation on the employer/employee relationship would also be significant and will lead to opportunities for the unscrupulous to benefit at the cost of the employer.

### Draft legislation

We have provided detailed comments on the current draft of the legislation which can be found [here](#). There are a number of points within it further to the above which we wish to bring to your attention:

### **Contract of employment**

Section 14. (6) states that:

*“(6) In this Ordinance-*

*(a) “contract of employment” means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,”*

This is an extremely broad definition of contract of employment and a severe extension of what was there in the previous draft. This catches a window cleaner or plumber and therefore will catch

most households on the island as liable for the actions of their “employee”.

### **Professional bodies**

Section 27. (1) states that:

*“(1) A professional body (“A”) must not discriminate against a person (“B”) –*

*(a) In the arrangements A makes for deciding to whom to confer a qualification or authorisation,”*

Passing exams and intellectual capacity correlate. Is it discrimination to require passing of exams? Could bodies such as the institutes of chartered accountants stop taking Guernsey candidates?

### **Clubs and associations**

Section 30. (6) states that:

*“In this section “club or association” means any association of persons, whether or not incorporated or whether or not carried on for profit, other than a professional or trade organisation, which has –*

- (a) At least 25 members, and*
- (b) Rules regarding admission to membership, and where membership involves a process of selection,”*

This means that if you have 25 members you are potentially not caught by the rules but if you have 24 members you are caught, where is the logic in this number? Can it really be the intent to discriminate against smaller organisations? It's clearly not proportionate. And is it right in an antidiscrimination law to favour those that discriminate in selection rather than those organisations that are open to all??

## Duty to make reasonable adjustments for a disabled person

Section 32. (1) states that:

*“(1) The following persons are under a duty to make reasonable adjustments for a disabled person as described in subsection (2) in the circumstances as set out therein-*

*(a) An employer, including in relation to a person who has applied to the employer for employment or work experience,”*

However under section 15. (1):

*“(1) An employer (“A”) shall not request or require information about a protected ground from another person (“B”) during a recruitment process...”*

This makes the process of making reasonable adjustments very difficult.

## Power of Committee to amend Schedule

Finally section 46 gives a broad and immense power to the Committee stating:

*“The Committee may by regulation amend this Schedule.”*

The regulation which contains much of the central apparatus of the law is therefore variable at the whim of the Committee.

## Compensation for injury to feelings

Section 50. (1) (b) covers the amount of compensation payable for injury to feelings stating:

*“(b) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations*

*prescribed by the Committee up to a maximum of £10,000.”*

The totality of potential employer exposure remains high – it will encourage speculative claims – especially given the very limited risk to employees and the burden of proof. Reduction and elimination of multiple legal awards on the same matter seems sensible, and should be stated, someone might collect on an unfair dismissal claim and then go to the tribunal.

## Summary

GPEG is appealing to the business community to work to ensure that any anti-discrimination legislation passed remains proportionate and realistic in a population such as ours with little evidence of a substantial current problem. Please help common sense prevail!

Having said all that, we positively support sensible anti-discrimination actions. We have no issues with much of the bill with most of our issues being in the economic and employment areas. None of the content on race, carer status, sexual orientation or religious belief poses any major basis for objection – and indeed we hope that these provisions work well – or even better - prove to be unneeded!

We strongly recommend that if you can find a way to invest in employment lawyers – you consider it seriously.