

# Proposals for a new Discrimination Ordinance



Committee *for*  
Employment & Social Security

June 2020

# What is the Committee proposing?

- Phased development of a new multi-ground discrimination Ordinance.
- The proposed Ordinance will:
  - make all forms of discrimination unlawful,
  - cover multiple grounds of protection, and
  - apply in the fields of employment, the provision of goods and services, education and in the membership of clubs and associations.
- The expansion of the Employment Relations Service to create an Employment and Equal Opportunities Service.
- The expansion and development of the existing Employment and Discrimination Tribunal.

# Phase 1



Disability



Carer  
status

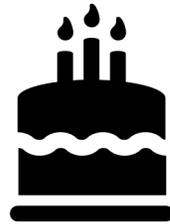


Race

# Phase 2



Religion



Age

# Phase 3



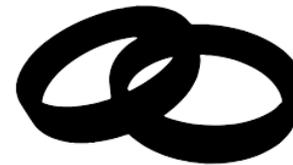
Sex



Sexual  
orientation



Gender  
reassignment



Marital  
status



Pregnancy  
& maternity

# Types of unlawful discrimination

- Direct discrimination
- Indirect discrimination
- Discrimination by association
- Discrimination arising from disability
- Denial of a reasonable adjustment

# Other prohibited conduct

- Harassment
- Sexual harassment
- Discriminatory advertisements
- Victimisation
- Instructions or pressure to commit a prohibited act
- Failing to provide equal pay for equal work

# Lawful different treatment

- There is an explanation not related to a protected ground
- Positive action
- Objective justification
  - Indirect discrimination
  - Discrimination arising from disability
  - Genuine and Determining Occupational Requirements
- A person cannot do the essential functions of a role
- Exceptions for well justified or necessary circumstances.

# Definition of 'race'

- 'Race' includes:
  - colour
  - descent
  - nationality
  - ethnic origins
  - national origins

# Definition of 'carer status'

- A person would have 'carer status' if they:
  - provide care or support (in a non-professional capacity)
  - on a continuing, regular or frequent basis
  - for a close relative or a person that they live with who has a disability which is of such a nature as to give rise to the need for that level of care and support.

# Definition of 'disability'

- A person would fall within the protected ground of 'disability' if the person has one or more long-term physical, mental, intellectual or sensory impairments.
- A 'long-term' impairment is an impairment which has lasted, or is expected to last, for not less than 6 months; or is expected to last until the end of the person's life.
- This time period would not exclude potentially relapsing/reoccurring conditions where the person is in a period of remission (e.g. cancer, multiple sclerosis, mental health conditions) or where treatment is controlling the condition (e.g. HIV, diabetes).

# Definition of 'disability' (2)

- Similar to Jersey definition of disability (with a 6 month time limit) with the following changes:
  - 'Impairment' is defined - based on the definition of disability in several other countries - Ireland, Australia, Hong Kong.
  - Clarification that if the existence of a condition, impairment or illness or the prognosis is in doubt, medical, or other expert, evidence may be required.
  - Exclusions from the Jersey definition of disability are instead covered as a more targeted exception to protect people and property from harm.
  - Without the unique and untested phrase "which can adversely affect a person's ability to engage or participate in any activity in respect of which an act of discrimination is prohibited under this Law." Internationally it is uncommon to have a limit on functioning like this in the definition of disability.

# Accessibility

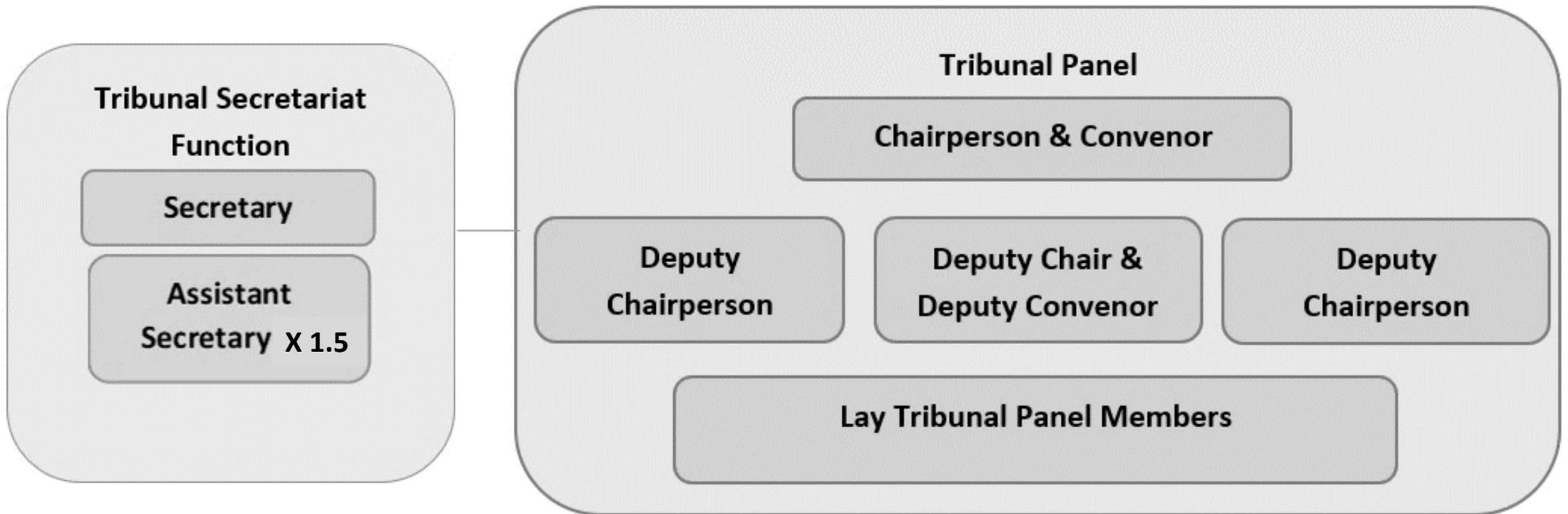
- Five year time delay from commencement before discrimination complaints can be made specifically regarding a 'physical feature' of a building (i.e. reasonable adjustment or indirect discrimination complaints).
- For all goods, services and education providers the duty to provide reasonable adjustments will be anticipatory (i.e. need to think about the needs of disabled people and how to meet these needs in advance of a request for an adjustment being made).
- Additional duty on public sector goods, services and education providers to prepare accessibility action plans within five years of entry into force.

# Making a complaint

- Heavy focus in proposals on the importance of education to drive cultural change.
- Free and impartial advice and guidance will be available to both parties.
- Focus on early informal dispute resolution - pre-complaint conciliation available free of charge.
- Employment and Equal Opportunities Service (EEOS) to provide proactive education, impartial advice and guidance and conciliation.
- EEOS to be led by a Statutory Official to ensure operational independence of complaints handling.

# Making a complaint (2)

## The Employment and Discrimination Tribunal

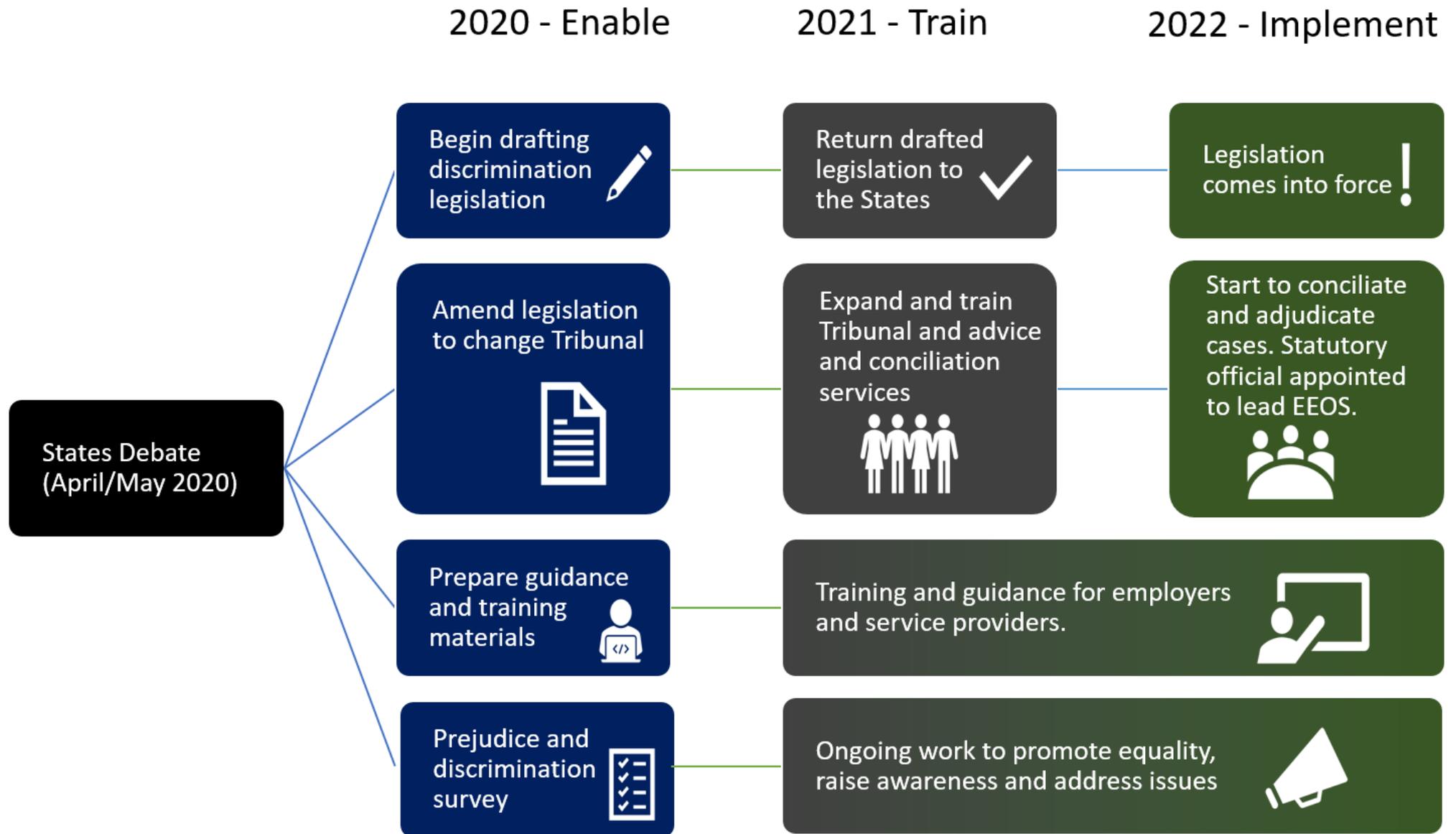


# Powers of the Tribunal and awards and remedies

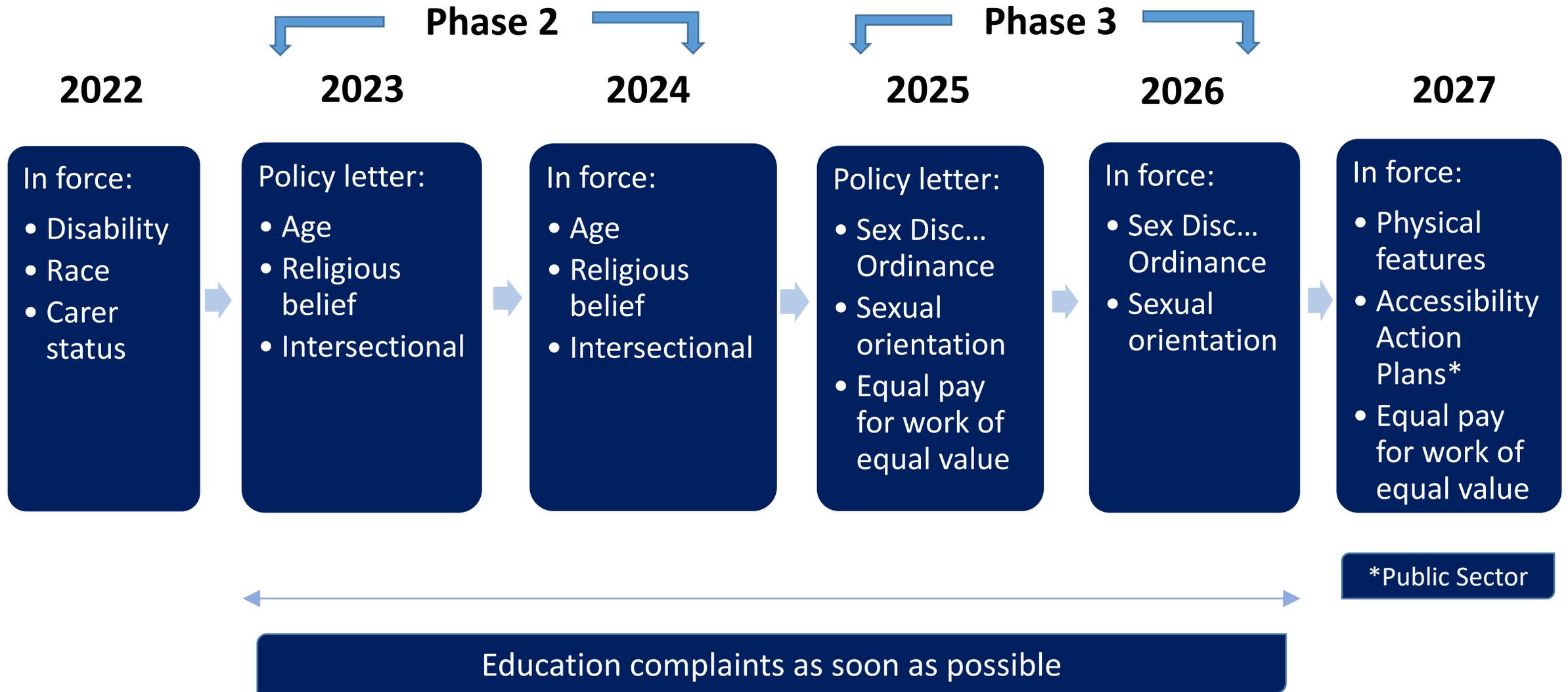
- Introduction of new powers to strike out and dismiss complaints or responses.
- Tribunal may make Orders for:
  - financial awards, and/or
  - non-financial remedies.
- Proposed financial compensation structure:
  - No change to unfair dismissal regime and capped awards.
  - For discrimination in the field of employment: An upper limit of 6 months' pay plus up to £10,000 for injury to feelings based on a three banded scale akin to the Vento Scale used in the UK (but with a much lower upper limit).
  - For discrimination in all other fields: An upper limit of £10,000 for financial loss plus up to £10,000 for injury to feelings.

Unfair dismissal complaint	Discrimination complaint	Award
 Not upheld	 Not upheld	No compensation.
 Upheld	 Not upheld	Up to 6 months' pay.
 Not upheld	 Upheld	Up to 6 months' pay plus up to £10,000 injury to feelings, possibility of non-financial remedies.
 Upheld	 Upheld	Up to 9 months' pay plus up to £10,000 injury to feelings, possibility of non-financial remedies.

# High level implementation plan



# Future phases of development of the Ordinance



## How can I find out more?

- Policy Letter - <https://gov.gg/article/176559/Proposals-for-a-New-Discrimination-Ordinance>
- Summary of proposals - [www.gov.gg/discrimination](http://www.gov.gg/discrimination)
- Easy read - [www.gov.gg/discrimination](http://www.gov.gg/discrimination)

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Discussion and questions