

A New Discrimination Ordinance

Discrimination Legislation Implementation

Stakeholder Group



Committee *for*
Employment & Social Security

February 2021

Attendees

- Representatives from ESS (Ed Ashton (Chair), Sarah Harvey- Policy Officer and Gill Evans, States Disability Officer)
- Representatives from the G5 group (representing Chamber of Commerce, Institute of Directors, Guernsey International Business Association, Confederation of Guernsey Industry & the Chartered Institute of Personal Development) (Kay Leslie and Bruce McDougall)
- Representatives from the Equality Guernsey Group and phase 1 grounds (Karen Blanchford - GDA, Ellie Jones – Liberate, Alyssa Martel – Carers Gsy and Rev Tim Barker)
- Representative from the Employment Lawyers Association (Richard Sheldon, will be Sarah Ash in future)
- Two representatives from Independent/Grant-aided Schools (Ashley Clancy and Jenny Palmer)
- Representative from the Pre-School Learning Alliance (Rachel Hockey)
- Representative from the Landlords' Association (Denis White, will be Jeff Guilbert in future)
- Representative from the Hospitality Sector (Karel Harris)
- Representative from the States of Guernsey Communications team (Luke Parker)

Structure of Session

- Welcome and Introductions
- Housekeeping (*action notes, email addresses, sharing of information*)
- Terms of Reference (*previously circulated*)
- Overview of Legislation, Implementation Plan and Timeline (*presentation*)
- Training Needs (*presentation & discussion*)
- Future Meetings
- Any Other Business

There will be an opportunity to ask questions after each section

Overview of Legislation, Implementation Plan and Timeline

Thank you. I am aware that some attendees will have listened to presentations about the discrimination legislation previously, but others may not have done, so I will cover the basic principles of the legislation even if this is a repeat for some people.

Discrimination is when someone treats you worse or puts you at a disadvantage because of a characteristic that you have. It is treating people unfairly because of things which should be irrelevant.

In Guernsey at the moment our existing legislation only protects people from discrimination at work on the grounds of sex (including pregnancy), gender reassignment and marriage.

In 1969 the UN's International Convention on the Elimination of All Forms of Racial Discrimination was extended to Guernsey. It is a requirement of this Convention that people should be legally protected from racial discrimination. The States also decided back in November 2013, when they approved the Disability and Inclusion Strategy, that proposals should be developed to protect disabled people and their carers from discrimination and that the Island should work towards extension of the UN Convention on the Rights of Persons with Disabilities, for which disability discrimination legislation is a requirement.

This work was prioritized through the Future Guernsey Plan and in June 2018 the

States agreed that proposals should be developed for multi-ground discrimination legislation. The CfESS carried out a detailed consultation in 2019, following which, in response mainly to businesses it modified its proposals and, on 2nd March 2020 published a Policy Letter setting out what the legislation should look like.

On 17th July 2020, the States agreed unanimously to proposals for the preparation of a new Discrimination Ordinance to outlaw discrimination on the grounds of disability, carer status and race. The States also approved an Amendment to the Committee's proposals, laid by Deputy Parkinson which added protection from discrimination on the grounds of religious belief and sexual orientation into the first phase of the development of the Ordinance.

Phase 1

Discrimination legislation

Phase 2



Disability



Age



Sex



Carer
status



Pregnancy
& maternity



Race



Marital
status



Sexual
orientation



Gender
reassignment



Religious Belief

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So phase one will cover disability, carer status, race, sexual orientation and religious belief (in some countries the terminology religion or belief is used and CfESS is currently considering whether that terminology should be used instead.)

The legislation is about ensuring that everyone can get equal and non-discriminatory access to work, education, housing and services – like shops, the cinema, the hospital, and so on. It will apply in employment, the provision of goods and services, education and accommodation and membership of clubs and associations. Discrimination legislation doesn't apply in private relationships

A second phase of policy work will return to the States at a later date, to add into the ordinance the prohibition of discrimination on the grounds of age, and to replace and extend the current Sex Discrimination Ordinance.

Future phases of development of the Ordinance



This diagram shows when we expect the additional grounds of protection to be added to the legislation. Phase one of new Ordinance is expected to come into force late in 2022.

Only phase 1 has been approved by the States, including funding, although the States has given in principle approval for the development of future phases and this timetable.

This means that if phase 1 comes into force in 2022, then phase 2 on age and modernisation of the sex discrimination ordinance could come into force in 2024, assuming, of course, that policy proposals are approved by the States ahead of this in 2023.

The delayed provisions in respect of physical features, accessibility action plans and equal pay for work of equal value are also shown on this slide as being in force by 2027. Education complaints should be able to be heard as soon as possible after the rest of the legislation is in force in 2022 and no later than 2026. Education complaints and accessibility, although delayed, may form part of phase one. Equal pay for work of equal value was proposed for the ground of sex only, so is yet to be fully approved as part of phase two. Note that the concept of equal pay for equal work is included in phase one of the proposals for the relevant grounds but this is different to equal pay for work of equal value.

The Committee is proposing that a post-implementation review is carried out in

2029 when all grounds are in force, or sooner if the need arises.

Types of unlawful discrimination	Other prohibited conduct
Direct discrimination	Harassment
Discrimination by association	Sexual harassment
Discrimination arising from disability	Discriminatory advertisements
Indirect discrimination	Victimisation
Denial of a reasonable adjustment	Instructions or pressure to commit a prohibited act
	Failing to provide equal pay for equal work

The new Ordinance will prohibit five main types of discrimination, as well as prohibiting conduct such as harassment, sexual harassment, [read list]. I am not going to go into these types of discrimination or conduct now, but would be happy to either explain them at another time or we will make this part of the training that will be available in due course.

Reasonable Adjustments and Accessibility

- 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 those needs in advance of a request for an adjustment being made).
- 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).
- Additional duty on public sector goods, services and education providers to prepare accessibility action plans within five years of entry into force.

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All employers and service providers (including accommodation providers) will need to respond to requests for reasonable adjustments and will need to make reasonable adjustments in response to requests if it is not a disproportionate burden for them to do so. For all goods, services and education providers only (not employers or accommodation providers) the duty to provide reasonable adjustments will be anticipatory. This means that they will need to think about the needs of disabled people and how to meet those needs in advance of a request for an adjustment being made.

In light of the fact that time is likely to be needed to consider and make adaptations to infrastructure and buildings to improve accessibility for disabled persons, the policy letter specified that discrimination complaints specifically relating to a **physical feature of a building** cannot be made until five years after the Ordinance comes into force. These could be complaints relating to a failure to make a reasonable adjustment or indirect discrimination.

Once this initial five year period is over, reasonable adjustments to physical features will have to be made within a time period that is reasonable and provided that it is not a disproportionate burden on the employer or service provider to do so.

Other reasonable adjustments (those not relating to physical features of a building), again subject to the test of disproportionate burden, would need to be

made for disabled people once the legislation is in force.

In addition, there will be a duty on **public sector** goods, services and education providers to prepare accessibility action plans within five years of entry into force of the legislation.

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

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Of course, there are a number of circumstances in which it would still be lawful to treat people differently.

It's important to be clear that the concept of discrimination is tied closely to the protected grounds – that is race, disability and carer status, sexual orientation and religious belief in phase 1. So, if an employer or service provider treats someone differently for **reasons unrelated to those grounds** (like, for example, making employment decisions based on how qualified a person is), it won't count as direct discrimination.

These are all explained in detail in the presentation notes and will also be explained in the training, so I will not go into detail now.

[Following for reference]

Positive action will be permitted but not required. Positive action is basically taking positive measures with a view to achieving full equality in practice.

It is also possible that for some forms of discrimination (not direct discrimination) employers and goods or service providers may be able to **objectively justify** their actions by demonstrating that they are a proportionate means of achieving a legitimate aim.

Similarly, an employer won't be **obliged** to hire or retain somebody who can't do the **essential functions** of a role. The law might prompt any employer to think more carefully about what's essential and what's merely desirable, or what could be done differently; or to consider if there's a reasonable adjustment that could be made to enable someone to perform a role.

As well as the concept of objective justification, the legislation will include a set of well-defined **exceptions**. Again, this is fairly common in anti-discrimination laws around the world. Exceptions provide for circumstances where it is legitimate to treat people differently even based on the protected grounds.

Complaints process

- Raise issue with employer/service provider first
- Free advice available for complainant and employer/service provider
- Pre-complaint conciliation offered
- Register complaint with the Secretary to the Employment & Discrimination Tribunal
- Conciliation offered
- Case heard by Employment & Discrimination Tribunal
- Appeal on point of law to the Royal Court

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The structure of the complaints process will be based on the existing framework in place for sex discrimination complaints with some tweaks.

We know that the majority of discrimination complaints can be resolved informally. People don't usually want to go through a legal process – they just want to have their issue resolved.

So, the policy letter explained that people should first raise their complaint with the employer or service provider that they feel has discriminated against them. This will provide the employer or service provider with the opportunity to put the issue right. Free advice will be available for the complainant and the employer or service provider.

As well as ensuring that free advice and post-complaint conciliation are offered, the policy letter proposed the introduction of a pre-complaint conciliation offering that would allow people to seek assistance to resolve a dispute before they even register a complaint. This should help to keep Tribunal case numbers low.

If the issue isn't resolved, a person will be able to register a complaint with the Secretary to the Employment & Discrimination Tribunal.

Conciliation will be offered to both parties, as is currently the case in sex discrimination complaints. Conciliation is carried out by a trained person. It can be

a very effective way of helping people to resolve disputes informally. Participation is voluntary.

If conciliation doesn't resolve the issue or one of the parties declines to participate, the case will be heard by the Employment & Discrimination Tribunal.

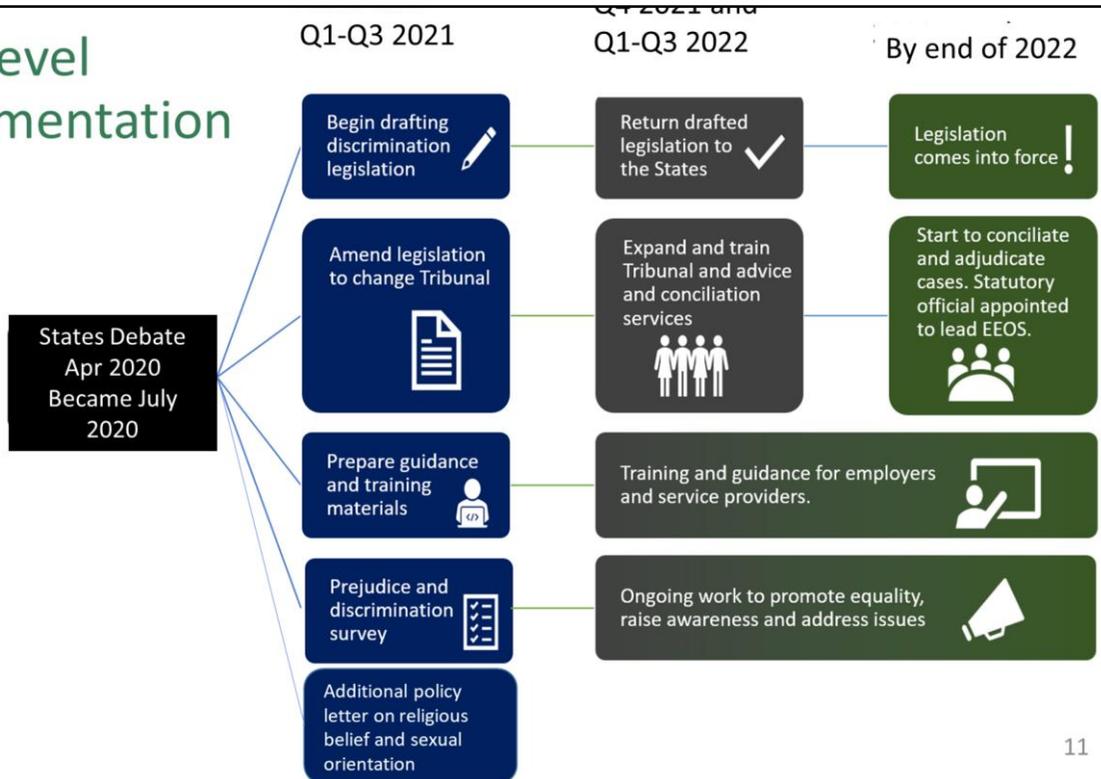
The Tribunal is a panel of three lay people drawn from a wider panel of members. The Tribunal currently hears sex discrimination cases so they have some experience in this field, although we know some changes will be needed to make sure that the Tribunal has the capacity, training and support to hear cases under the new legislation.

Parties can appeal the decision within one month to the Royal Court on a point of law.

Advice and guidance will be available to both parties throughout this process.

As in the present system, people will be able to represent themselves or nominate someone to represent them such as a friend, trade union representative or legal representative, so someone wouldn't need a lawyer to bring a case.

High-level Implementation Plan



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There is a great deal of work required to make this all happen, both some further policy work and project implementation.

This diagram shows how Phase 1 will be implemented.

We have already begun much of the work in the first column.

In late 2021 or early 2022 the legislation should return to the States for approval. Services will be developed to provide conciliation and to manage and hear discrimination complaints. In 2021 we will expand this provision and in 2022 train people up ready for the legislation to come into force by the end of 2022.

While a date has not been set for when the legislation will come into force, it is anticipated that this would be later in 2022, if all goes to plan, so businesses and organisations will have time to prepare. Originally we were hoping for April 2022, but delays in debate due to Covid-19 and the rescheduling of the General Election mean that the implementation date is now likely to be towards the end of 2022.

Implementation

- Governance structure
- Project Team
- Project Manager
- Expansion/enhancement of Employment Relations team to Employment and Equal Opportunities Service
- Employment and Discrimination Tribunal
- Survey
- Policy letter on religious belief and sexual orientation
- Drafting of legislation
- Code of practice, guidance documents and training

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We have put together a Project Team and governance structure, linking in to the Disability and Inclusion Strategy Programme Board, which I will show on the next slide.

ESS is in the process of sourcing a part-time Project Manager to lead the implementation, either through a contract position or through a secondment.

We are looking to appoint a statutory official to lead the Employment and Equal Opportunities Service (EEOS) and to modestly expand the tribunal secretariat and the current Employment Relations Service team who provide impartial advice and conciliation services and deal with compliance issues and will evolve into the EEOS. Ideally this team will also become more independent over time, with the appointment of the statutory official and hopefully separate premises.

Also during the course of 2021 we will be expanding the tribunal panellists to 16 lay members, and 4 legally qualified chairs (which may include existing panellists) with a view to having a big enough pool of panellists to manage more complaints and also to increase the diversity of the panel in terms of both their experience and characteristics.

We have also started the planning of work on a prejudice and discrimination survey in order to provide benchmark data against which we can judge in future years how successful the legislation and supporting education and training has been.

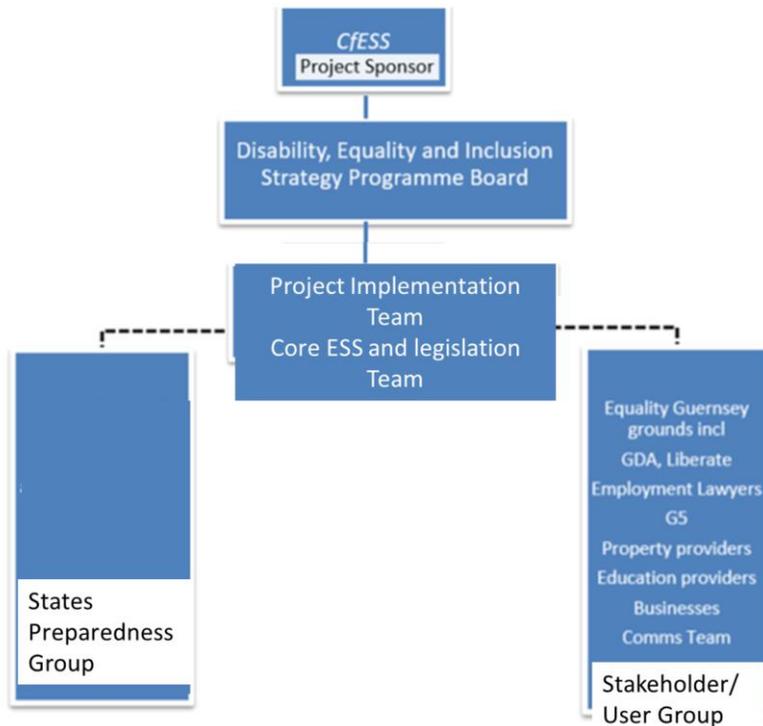
The budget has already been approved by the States when it approved the budget for 2021 towards the end of last year and phase one is being recommended by P&R for inclusion as one of the priorities in the Government Work Plan which is due to be debated by the States next month.

The legislation has been given high priority for drafting. The legislation is being divided into four sections and is underway. We are hoping to be able to bring a draft of the legislation to this group later in the year. The legislation will need to return to the States for final approval and we are aiming for submission by the end of the year.

Whilst the legislation itself needs to be given final approval by the States, the policy debate on what the legislation will contain has already happened. The exception being an additional policy letter on the exceptions for religious belief and sexual orientation, as these grounds were added into phase one by amendment at the last minute. That policy letter is well underway.

We will also be raising awareness of the new legislation, developing codes of practice, and preparing guidance, education and deliver training. That is what we want to talk to you about in more detail today when we come to the next agenda item, as we would welcome your feedback on how this training should be delivered, length of training to whom etc.

To give you an idea of timescales we are proposing to plan and procure the training packages between now and July, launch the training by September, deliver some of the more general awareness training this side of Christmas and then deliver more specific training on the legislation commencing early in 2022, to then give business several months to prepare for the legislation coming into force late in 2022.



This is the project team and governance structure that I was just mentioning.

The Discrimination Legislation is one project within the Disability Equality and Inclusion Strategy Programme.

CfESS are the sponsors for the programme and there is a programme board with political representation to oversee the programme., i.e. the Disability, Equality and Inclusion Strategy of which the legislation is a part. At staff level within ESS there is a Discrimination Legislation Project Implementation Team (with assistance from the law officers, the education office, corporate comms and data and analysis where required.) These are the core civil servants responsible for putting the infrastructure in place for the legislation to happen and for advice to be available and for complaints to be heard. There are two other groups feeding into/liasing with this group. First the stakeholder or user group which is everyone invited here today, representing both those who will have rights under phase one of the legislation through the protected grounds and those who will have responsibilities under the legislation i.e. employers and service providers, businesses, providers of good and services, education providers, accommodation providers etc Secondly, the States of Guernsey like any other employer or service provider needs to ensure that it is as ready as possible for the new legislation by looking at its buildings and policies and procedures and so will be communicating internally across the organization through a States Preparedness Group.

How can I find out more?

- Policy Letter - <https://gov.gg/article/176559/Proposals-for-a-New-Discrimination-Ordinance>
- Resolutions - <https://gov.gg/article/177148/States-Meeting-on-15--22-July-2020-Billet-dtat-XV---States-Accounts>

Contact us:

- equality@gov.gg

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The Committee's proposals are set out in full in a Policy Letter which is available via the link on the slide. The States resolutions are also available. As already mentioned, the Committee's policy proposals were amended to include religious belief and sexual orientation in phase 1 and to condense the grounds of protection into two phases.

If you have any questions or need any further information, please email Sarah at equality@gov.gg. I am happy to take some questions now or speak to you separately outside this meeting.

Any questions?

Training needs

Hello. So Sarah has given you quite a lot of detail about the legislation. In this section discuss what training needs you will have and talk about the training that ESS might consider commissioning for later this year/ early 2022.

I also want to ask about what guidance documents might be useful as these will be included as part of the training plan.

I want to ask about the content you wish to be in the training, how you would prefer this training to happen and the best way for us to deliver it to you.

We realise it is important include you all in this conversation, as the training and any guidance documents/ code of practice, will need to provide the information so that everyone can understand their responsibilities when the new legislation is in place.

Over view of proposed training

- General awareness training: foundation training
 - Disability awareness
 - Diversity and Equality
 - Disability awareness- small businesses
 - Diversity and Equality course for managers
- Legislation
- Discrimination
- Responsibilities of providers of goods and services
- Employers responsibilities
- Access requirements

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There will be two phases of training.

Phase one will include foundation level training. This will start to introduce some of the subjects around equality and the additional protected grounds.

The States online disability awareness training has been provided through a UK supplier and has been available for a number of years.. This is currently being reviewed/ updated and this supplier has offered an additional three training courses which we are presently considering. These would complement the existing training and target the new protected grounds.

These will be available as online courses.

These will be available in Q2/3 2021 and I will discuss in a little more detail on the next slides.

The second phase of training will be more detailed and we propose it will cover the topics listed in the slide.

General Awareness training

Disability awareness

- Introduction to disability
- Impairments
- Hidden impairments
- How to assist people with different impairments.
- Language

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As I mentioned earlier, this training has been available for a number of years, I hope most of you might be aware of it?
It is being reviewed and updated and should be available in Q2/3 2021.

This will cover the topics listed in the slide

Diversity and Equality

- an introduction to equality and diversity
 - Sexual Orientation
 - Religious belief / Religion or Belief
 - Race
 - Carer status
- definition
- when discrimination can occur
- harassment
- victimisation
- language

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This training course will be an online offering, it will complement the disability awareness training, and will focus on the other 4 protected grounds that will be come in with the first phase of the legislation.

This will discuss some basic principles and introducing the different protected grounds. definition, discrimination, harassments, victimisation and appropriate language to use.

This will be relevant for any one to undertake as an introduction to aspects of equality and diversity that they might not be aware of.

Disability awareness- small businesses

- financial power of disabled people
- how disabled people influence the spending of others;
- why it makes sense to be accessible;
- unhelpful assumptions
- customers and colleagues with hearing impairments
- customers and colleagues with a visual impairment:
- language; what is acceptable?

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A further training course is the disability awareness for small businesses.

This is an online training which will provide practical advice about making businesses more disability friendly accessible for everyone.

Language : one of the main reasons for people when they struggle to communicate with those who have a disability many don't want to put their foot in it, so understanding of language etiquette will help their customer service.

Diversity and Equality course for managers

- Discrimination and Equality concepts
- Discrimination and recruitment
- Objective justification
- What is a genuine occupational requirement?
- What does the employer have to prove?
- Positive action
- Positive discrimination

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The final offering in this phase will be diversity and equality for managers. This will cover some of the high level principles and considerations that managers need to be aware of when considering equality and diversity.

Again, I expect it to be available in Q2/3 2021 and it will be promoted through this group when it is available.

Discrimination Legislation

- Protected grounds
- Definition of disability
- Carer status
- Key requirements
- Differences to UK and Jersey legislation

The second phase of training will start towards the end of the year.

This will be more detailed, more technical training.

It will go into more detail about the key requirements of the legislation, the different protected grounds, definition of disability and carer status. It will also explain the differences between the Guernsey UK and Jersey law. This will be particularly relevant for those businesses who are pan island or for businesses that have UK connections.

Discrimination

- Types of discrimination
- Prohibited conduct
- Lawful different treatment
- Objective justification
- Reasonable adjustments for disabled people
- Awards and remedies
- Exceptions
 - general
 - education providers,
 - accommodation providers,
 - religious organisations,
 - clubs and associations.

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This section will go into more detail about discrimination: the different types and more of the detail around prohibited conduct and lawful different treatments. Sarah has already gone into some of the detail in her previous slides. These slides aim to show what topics we would propose to include in the training.

It will also cover the exceptions. There will be some overlap for different service providers, but some specific exceptions for the particular services.

What will employers and service providers need to do?

- Think about the likely needs of customers/clients
- Deal appropriately with bad practice
- Offer staff training
- Focus on the positives (morale, motivation, improved recruitment and retention, client appreciation)
- Carry out an equality audit
- Consider an accessibility audit and plan

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The slide is aiming to get you thinking about what employers and service providers need to think about.

This will then guide the detail of the training.

Training for employers

- Background
 - Unconscious bias
 - Overcoming bias in the workplace
 - Human Rights Law
 - Introduction to the Employment and Equal Opportunities Service
- In relation to staff
 - Policies and procedures
 - Barrier free recruitment and induction
 - Reasonable adjustments
 - Performance management
 - Attendance management
 - Supporting existing employees

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Training that might be useful for employers so they can understand their responsibilities.

Background information about:

unconscious bias and bias in the workplace, the Human Rights Law and the current position in Guernsey.

An introduction to the new Employment and Equal Opportunities Service which will replace the current Employment relations service. What that service will do and the support/ advice it can give.

Responsibilities of the employer with relation to their staff: inclusive policies and procedures including inclusive recruitment, adjustments, performance and attendance management.

Supporting existing employees Just an interesting point, an estimated 86% of people with a disability acquire it during their working lives so this is a really important consideration.

Reasonable Adjustments and Accessibility

- Introduction to accessibility and reasonable adjustments
- Why is the consideration of access is important
- Understanding access- it is not just about getting into the building
- Requirements of the legislation
- Reasonable adjustments
- Accessibility audit and action plan

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As Sarah has mentioned the law will introduce a requirement for public sector goods and service and education providers to perform an access audit and develop an action plan within 5 years.

This will not be a legal requirement for the private sector but is advisable as all employers and service providers (including accommodation providers) will need to respond to requests for reasonable adjustments and may need to make reasonable adjustments if it is not a disproportionate burden for them to do so.

For all goods, services and education providers only (not employers or accommodation providers) the duty to provide reasonable adjustments will be anticipatory. This means that they will need to think about the needs of disabled people and how to meet those needs in advance of a request for an adjustment being made.

Carrying out an audit and developing a plan will show that goods and service and education providers have thought about the needs of customers and what they can do to meet these needs in advance.

Questions....

1. Is there anything else you would like included in the training content that is not already included in the slides?

2. What would be your chosen method for the presentation of the training?
 - Presentations to mixed groups of organisations
 - Presentations to individual organisations
 - Virtual presentations
 - On line training sessions available when suits the individual
 - Training document to download for individual use
 - Other suggestions

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It is up to you how you think it best to canvas the opinions of your members/ organisations that you represent but we would like 4 main questions to be

Please circulate the following questions and we would like the Responses in 3 weeks time, by close of play on the 19th March.

3. What time could you commit to the training sessions?

- 1 session of up to 90 minutes: High level information about legislation, discrimination and employers responsibilities
- Multiple sessions of 90 minutes: detailed separate sessions for legislation, discrimination and employers responsibilities
- What numbers from your organisations would attend the above sessions.

4. What additional guidance documents might you find useful?

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We will also be looking to produce certain documents, such as a code of practice and guidance documents which will also support the training content. Importantly we also ask about the time commitment that organisations/ members will be able to commit to this training. It may be possible to offer two different levels of training, one covering main principles in a single session, and then further ore detailed sessions and then a more detailed series of sessions about the different topics.

It would be useful to gauge the number of people that might prefer each type of training.

We expect to develop a code of practice, but what other document might be useful

Any questions?

Structure of Session

- Welcome and Introductions
- Housekeeping (*actions, email addresses, sharing of information*)
- Terms of Reference (*previously circulated*)
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Examples of 'reasonable adjustments'

Many adjustments cost very little. They could include:

- Making information available in different formats
- Modifying equipment
- Reorganising activities
- Rescheduling work
- Adjusting curricula, learning materials and teaching strategies
- Adjusting medical procedures
- Enabling access to support personnel
- Making changes to facilities or buildings to make them more accessible

Slide used for questions

Here are some examples of what reasonable adjustments might be.

It's important to realise that some reasonable adjustments cost very little, and that this is not all about ramps to buildings (though those can be important too). As you can see, reasonable adjustments could also involve providing information in a different format or doing things slightly differently, like changing someone's working pattern.