**GDA response to the GPEG press release.** *Revised for members 27th March 2021*

“Every human being is born with human rights, those rights are inalienable - it is the role of governments to ensure and protect those rights. That is all that is happening with this legislation - recognising, explaining, and enshrining the rights of every person in the Bailiwick. Sometimes people with resources and power decide that it’s too expensive to recognise that every human being has the same human rights, and they try to delay or suppress rights. But we all know what happens when you stand on the wrong side of history - we remember Mandela, not deKlerk” - *Guernsey Equality Ambassador*

Guernsey Policy and Economics Group (GPEG), a local group styling itself as a “think tank” has suggested that more work needs to be done on identifying who would benefit from discrimination legislation and what the likely costs will be (cost/benefit/impact assessment, etc).

GPEG also questions why Guernsey hasn’t considered the Jersey or UK models and suggests that business involvement in developing of the legislation has been “light”

This group appears to be particularly concerned about the provisions dealing with disability (accessibility and reasonable adjustment) and has branded the legislation as a “blank cheque”.

Additionally, GPEG asks whether, considering Brexit and the pandemic, now is the right time to introduce such legislation and can Guernsey afford it.

The proposals themselves answer many of this group’s questions but it is a large document and, as GPEG was not involved in the development work, including the many stakeholder meetings, this may explain the groups misunderstanding of some essentials.

The answers to most of these questions can found by studying the Billet, but, to gain even further incite it is probably necessary to understand; Guernsey’s Disability and Inclusion Strategy, the various pieces of research underpinning the Strategy, the international conventions dictating scope and aims, the work of the independent consultants, the response to consultation report, as well as the seven years of consultation with various stakeholder groups which ultimately led, in July of last year, to the proposals being passed unanimously by the States. Links to some of these are shown below:

* [Guernsey’s Disability and Inclusion Strategy (from page 2115 of the Billet)](https://www.gov.gg/CHttpHandler.ashx?id=84641&p=0)
* [States Resolutions regarding the above](https://www.gov.gg/CHttpHandler.ashx?id=85262&p=0)
* [2012 Disability Needs Survey](https://www.gov.gg/article/154882/Disability-Needs-Survey) (Prepared by: BMG Research and the University of Nottingham)
* [Discrimination Legislation Consultation Report](https://www.gov.gg/CHttpHandler.ashx?id=123084&p=0)
* [The UN Convention on the Rights of Persons with Disabilities (CRPD) (pdf)](https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf)
* [The Committee on the CRPD general comments](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx)

It should be noted that whilst Guernsey’s business groups had concerns about the original draft proposals, however, they did then support the proposals as amended by the public consultation process and subsequent negotiations.

**Who benefits?**

The short answer is that everyone stands to benefit from this legislation.

The fact that GPEG are asking who and how many will benefit from the legislation means that the group may not be aware of the local research (see above) and the international conventions (e.g., CRPD, etc) that inform and underpin the proposals.

Two fundamental principles of the legislation appear, in particular, not to have been grasped.

Firstly, Guernsey’s proposals are based on grounds of discrimination, rather than the arguably more problematic concept of “protected characteristics” that the UK and Jersey Laws are based on. Indeed, the Guernsey Law which provides the legal basis for the development of the proposed secondary legislation is the [Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004](https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=55046) and this law aims to prevent discrimination against any person *by reason of*, for example, race, colour, sex, age and disability, etc. The difference in the approaches are that discrimination legislation, in line with UN Convention, should aim to prevent discriminatory acts based on certain grounds, rather than target a defined protected group (see [Committee for CRPD G.C. 6](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en)).

The second principle is that the legislation has been developed so that islanders will at last be able to exercise certain existing universal rights (principally the right to non-discrimination).

Guernsey’s agreed proposals, aside from the provisions dealing with alterations to physical features of buildings, which temporarily fall short, largely comply with the Conventions, such as CRPD, to which Guernsey is committed to realising.

Governments are required by Conventions such as CRPD to immediately take steps to prevent discrimination, including the introduction of discrimination legislation.

This legislation is not based on the concept of “benefits” or “beneficiaries” but instead gives legal force to existing rights and duties and affects rights holders and duty holders. All residents of Guernsey are rights holders.

Guernsey is committed to realising CRPD and, in 2013, resolved to request extension of the UK’s ratification of the convention to Guernsey. This cannot be achieved without discrimination legislation being in place.

**Is now the right time and is more work needed to identify costs?**

The answer, of course, is that Guernsey is a long way behind most of the rest of the developed world and this legislation should have been in place years ago. Half a century has gone by since Guernsey made a commitment to outlaw race discrimination, and almost eight years have passed since the States agreed the disability and Inclusion Strategy and promised to introduce disability discrimination legislation.

The pandemic brought a better understanding to many islanders about the lives of some persons with disabilities - particularly about the effects of isolation and exclusion that some endure. The fact that we have experienced this pandemic should give impetus to progress this legislation, not delay it. We believe that a better grasp of the proposed timetable, and an understanding that costs to business are not onerous, should allow many of your concerns to fall away.

The implementation of the legislation is not imminent. The agreed proposals, July 2020, took account of business groups’ wishes to implement the legislation in phases, and phase one will not come be enacted until the end 2022 with no parts coming into force until 6 months after that. Certain parts (changes to physical features of buildings) will not be required until 5 years after enactment (2027).

GPEG, without research, has started with a premise that the legislation represents an overall cost to Guernsey. This is unfortunate as there is a mass of research, much of which organisations such as the GDA and Equality Guernsey have previously referenced, that shows significant economic gain from improving access to employment and goods and services.[[1]](#endnote-1)

Other significant principles that affect possible cost have possibly not been understood. Principles of reasonableness and protection from disproportionate burden are built into the proposals, as they are in most discrimination legislation around the world including the UK and Jersey. This means that no business or organisation will suffer an unreasonable or disproportionate cost or burden from making adjustments required to accommodate the needs of persons with disabilities. The proposed provisions dealing with accessibility and reasonable adjustment are now similar to those which apply in the UK and in Jersey.

The burden on the States to ensure services and infrastructure are accessible differs from the burden on the private sector. However, that burden is itself limited by the principle of progressive realisation. The States have control of the rate of progress and budget – the UN will require this progress to be reasonable taking into account Guernsey’s resources. If these principles are understood, logically, there is no need for separate in-depth cost analysis. In fact, it would be a waste of tax payer’s money

Evidence from many other jurisdictions shows that most reasonable adjustments cost nothing other than the management time required for consideration and implementation and that, even when there is a cost, that cost is usually relatively minor.[[2]](#endnote-2)

**The models for the legislation**

GPEG questions why the UK and Jersey legislation have not been considered and suggests business involvement has been insufficient. These are further basic misunderstandings.

The Legislation Development Group, formed by ESS in early 2017, included a legally qualified member of the Chamber of Commerce.

Stakeholders, including all the business groups were involved in selecting the criteria to be used in evaluating the various models of legislation.

In November 2018 all the business groups attended a presentation of the early draft proposals. All those attending were asked for comment and feedback which would then be used to inform the final draft due to go out for public consultation in the summer of 2019. Businesses were then also invited to take part in the main consultation.

In developing the proposals, ESS considered many jurisdictions and then commissioned an independent expert study of five jurisdictions (Hong Kong was additionally considered and discounted at an early stage) and then, in 2019, when the Jersey Law’s disability provisions were enacted, ESS commissioned a separate evaluation of the Discrimination Jersey Law.

ESS may provide further details of the evaluations on request. The GDA’s own evaluation includes salient points from the expert’s report:

* [Suitability of the Discrimination (Jersey) Law for adoption by Guernsey](https://disabilityalliance.org.gg/wp-content/uploads/2021/02/Evaluation-of-the-discrimination-Jersey-Law_final.pdf)

GPEG question the proportionality of the chosen models yet asks about the application of the UK legislation. The UK Equality Act amalgamates dozens of older pieces of discrimination legislation. The Act, with over 200 provisions and 28 additional schedules is one of the, if not the largest and most complex pieces of discrimination legislation in the world. It has also been shown, in certain crucial aspects, to be ineffective and its compliance with international convention in certain matters, including the way it defines disability, is questionable.

The scope of the disability related proposals go no further than the minimum required by Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD) and cannot therefore be regarded as disproportionate. These minimum requirements do not vary with size of jurisdiction. Further explanation is given by the Committee for CRPD [General Comment 6](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en).

Although the current proposals have moved further towards the UK model in many respects, including with respect to the provisions dealing with accessibility and reasonable adjustment, it should be noted that other parts of the proposals are based on legislation from Ireland, and to a lesser extent Australia, which have operated successfully, and with little need for amendment, for decades. Both are largely compliant with internationally agreed standards.

Many of the mentioned resources and reports may be viewed on our [Discrimination resource timeline](https://disabilityalliance.org.gg/our-voice/discrimination-legislation-resources/) and our [Frequently Asked Questions (FAQs)](https://disabilityalliance.org.gg/campaigns/discrimination-policy-letter/discrimination-legislation-faqs/).

There is also the question of Guernsey international reputation. It would be useful perhaps, if GPEG reflected on how not introducing this legislation might be viewed by other jurisdictions, and indeed by the customers, employees and companies Guernsey needs to attract and retain. Those viewing from outside might be forgiven for thinking that **Guernsey is somehow seeking to gain economic advantage from not respecting rights.** This idea is obviously abhorrent in any true democracy and we must be careful that continued delays in respecting rights do not fuel such thoughts.

1. For example, a report from a respected Canadian think tank, the Conference Board of Canada, concludes that Canada’s GDP would improve permanently by $16 Billion a year (about 1%) if access to employment for persons with disabilities was improved. Gibbard, Desormeaux, Persaud, and Wright, 2018, ”The Business Case to Build Physically Accessible Environments” [↑](#endnote-ref-1)
2. Estimates of the average cost of reasonable adjustments (excluding management time to consider and implement) vary but are low. ACAS, for example give a figure of £185 whereas [People in Business](https://www.peoplebusiness.co.uk/disability-advice-for-employers/) suggests a figure of £75. [↑](#endnote-ref-2)