

The Prevention of Discrimination (Guernsey) Ordinance, 2022 - Draft - Accompanying notes

1. Commencement

Section 76 provides that different dates may be appointed for different provisions within the legislation to enter into force.

It is intended that there would be separate, and later, commencement dates for the following provisions: -

- Section 8 to the extent that it would require changes to a physical feature.
- Section 28 (education)
- Any obligation to make a reasonable adjustment to a physical feature (Sections 31(2)(b), 34 and 35)
- Section 36 (public sector duty to prepare accessibility action plans)

2. Exceptions

- a) There is one additional exception included with respect to animals (section 14 of the Schedule).
- b) A small number of proposed exceptions have not been provided for in the legislation, either because legal drafters have advised that they are not required, or because they are covered by general exceptions, or because they are intended to be provided for in phase 2 (age and sex grounds).

3. Definitions

There are still two definitions to be completed:

- i) On page 91 - ""**the Director**" means the Director of the Employment and Equal Opportunities Service appointed under []".

There will be a separate piece of legislation regarding the statutory official which will be referred to here.

- ii) On page 112 - "In this section, "**supported employment**" means []".

We will be liaising with relevant stakeholders at the end of January regarding this specific definition.

The Prevention of Discrimination (Guernsey) Ordinance, 2022

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SCHEDULE

The Prevention of Discrimination (Guernsey) Ordinance, 2022

THE STATES, in pursuance of their Resolutions of the 17th July 2020^a and [4th November] 2021^b, and in exercise of the powers conferred on them by sections 1 and 4 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^c and all other powers enabling them in that behalf, hereby order: —

PART I PROTECTED GROUNDS

Disability.

1. (1) Disability is a protected ground.
- (2) A person has the protected ground of disability if the person has an impairment which —
 - (a) has lasted, or is expected to last, for not less than six months, or
 - (b) is expected to last until the end of the person's life.

^a Article XV of Billet d'État No. XV of 2020.

^b Article [XIV] of Billet d'État No. [XX] of 2021.

^c Order in Council No. XIII of 2005.

(3) For the purposes of the time periods specified in paragraph (2), an impairment can have lasted, or can be expected to last, notwithstanding —

- (a) the impairment being, or having been, in a period of remission where the impairment has the potential to recur, or
- (b) medical treatment controlling the symptoms of the impairment to any extent.

(4) In relation to the protected ground of disability —

- (a) a reference to a disabled person is a reference to a person who has a disability,
- (b) a reference to a person who has a particular protected ground is a reference to a person who has a particular disability, and
- (c) a reference to persons who share a protected ground is a reference to persons who have the same disability.

(5) For the purposes of this Ordinance, "**impairment**" means —

- (a) the total or partial absence of one or more of a person's bodily or mental functions, including the absence of a part of a person's body,
- (b) the presence in the body of organisms or entities causing, or likely to cause, chronic disease or illness,

- (c) the malfunction, malformation or disfigurement of a part of a person's body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, illness or disease which affects a person's thought processes, perception of reality, social interactions, emotions or judgement or which results in disturbed behaviour.

Race.

- 2. (1) Race is a protected ground.
- (2) Race includes —
 - (a) colour,
 - (b) nationality,
 - (c) ethnic origins,
 - (d) national origins,
 - (e) descent, which includes caste.
- (3) In relation to the protected ground of race —
 - (a) a reference to a person who has a particular protected ground is a reference to a person of a particular racial group, and

(b) a reference to persons who share a protected ground is a reference to persons of the same racial group.

(4) A racial group is a group of persons defined by reference to race, and a reference to a person's racial group is a reference to a racial group into which the person falls.

(5) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

(6) For the purposes of this Ordinance, "**national origins**" includes being of Guernsey origin.

Carer status.

3. (1) Carer status is a protected ground.

(2) Subject to subsection (4), a person ("A") has the protected ground of carer status if A provides care or support on a continuing, regular or frequent basis for a person with the protected ground of disability ("B"), and –

(a) B's disability is of a nature which requires continuing, regular or frequent care or support of the kind that A is providing, and

(b) A lives with B or is a close relative of B.

(3) A is a close relative of B if either A or B is the –

(a) spouse, partner, child, sibling, parent, grandchild, grandparent, or

(b) parent of a spouse or partner,

of the other.

(4) A does not have carer status if the care or support provided to B is provided by A in a professional capacity, as part of A's contract of employment or in the course of self-employment by A, or for remuneration (however, A may be reimbursed by B for all expenses properly incurred in connection with the care or support).

Sexual orientation.

4. (1) Sexual orientation is a protected ground.

(2) Sexual orientation means a person's sexual orientation towards —

(a) persons of the same sex,

(b) persons of a different sex, or

(c) persons of both the same sex and persons of a different sex.

(3) In relation to the protected ground of sexual orientation —

(a) a reference to a person who has a particular protected ground is a reference to a person who is of a particular sexual orientation,

(b) a reference to persons who share a protected ground is a reference to persons who are of the same sexual orientation.

Religious belief.

5. (1) Religious belief is a protected ground.
- (2) Religious belief includes religious background or outlook, and a reference to religious belief includes a reference to a lack of religious belief.
- (3) In relation to the protected ground of religious belief —
- (a) a reference to a person who has a particular protected ground is a reference to a person of a particular religious belief,
- (b) a reference to persons who share a protected ground is a reference to persons who are of the same religious belief.

PART II

MEANING OF DISCRIMINATION

Direct discrimination.

6. (1) A person ("A") discriminates against another ("B"), if because of a protected ground, A treats B less favourably than A treats or would treat others.
- (2) The protected ground referred to in subsection (1) which is the reason for the less favourable treatment may —
- (a) exist at present,
- (b) have previously existed but no longer exist,
- (c) exist in the future, or

(d) be imputed to B by A.

(3) If the protected ground is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat a disabled person more favourably than A treats B.

(4) If the protected ground is carer status, and B does not have carer status, A does not discriminate against B only because A treats or would treat a person with carer status more favourably than A treats B.

(5) For the purposes of establishing a contravention of subsection (1), it does not matter whether A has the protected ground.

Discrimination by association.

7. A person ("A") discriminates against another ("B") who is associated with another person ("C") if –

- (a) A treats B, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated, and
- (b) similar treatment of C would, by virtue of sections 6(1) and (2), constitute discrimination.

Indirect discrimination.

8. (1) A person ("A") discriminates against another ("B") if A applies to B a provision, criterion or practice which is discriminatory in relation to a protected ground of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a protected ground of B's if –

- (a) A applies, or would apply, it to persons with whom B does not share the ground,
- (b) it puts, or would put, persons with whom B shares the ground at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

Discrimination arising from disability.

9. (1) A person ("A") discriminates against a disabled person ("B") if —

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

PART III

MEANING OF OTHER TERMS RELATED TO PROHIBITED CONDUCT

Victimisation.

10. (1) A person ("A") victimises another person ("B"), if A treats B less favourably than A treats or would treat others, and does so because B has —

- (a) made a complaint under this Ordinance,
- (b) brought proceedings against A or any other person under this Ordinance,
- (c) given evidence or information in connection with proceedings brought by any person against A or any other person under this Ordinance,
- (d) otherwise done anything under or by reference to this Ordinance in relation to A or any other person (including, for the avoidance of doubt, opposed acts which contravene this Ordinance), or
- (e) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance,

or because A knows that B intends to do any of these things, or suspects that B has done, or intends to do, any of them.

(2) Subsection (1) does not apply to treatment of B where the treatment is by reason of B giving false evidence or information, or making a false complaint or allegation, if the evidence or information is given, or the complaint or allegation is made, in bad faith.

Harassment.

11. (1) A person ("A") harasses another ("B") if —
- (a) A engages in unwanted conduct related to a protected ground, and

- (b) the conduct has the purpose or effect of —
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if —
 - (a) A engages in unwanted conduct of a sexual nature, and
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account —
 - (a) the perception of B of the conduct in question,
 - (b) the circumstances of the case,
 - (c) whether it is reasonable for the conduct to have that effect.
- (4) This section is without prejudice to the Protection from Harassment (Bailiwick of Guernsey) Law, 2005^d.

^d Order in Council No. VIII of 2006.

PART IV
CONDUCT PROHIBITED GENERALLY

Advertisements.

12. (1) A person must not publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be prohibited by any provision of this Ordinance.

(2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be so prohibited.

(3) The publisher ("A") of an advertisement prohibited by subsection (1) is not subject to any liability under that subsection if A proves –

(a) that the advertisement was published in reliance on a statement made to A by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be prohibited, and

(b) that it was reasonable for A to rely on that statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3)(a) which in a material respect is false or misleading is liable to proceedings brought by the Employment and Equal Opportunities Service in accordance with Part IX.

(5) Proceedings in respect of a contravention of subsection (1) shall be brought by the Employment and Equal Opportunities Service in accordance with Part IX.

Causing, instructing or inducing another person to undertake a prohibited act.

13. (1) A person ("A") must not, in relation to another person ("B") —
- (a) in the case where A has authority over B or where B is accustomed to act in accordance with A's wishes, instruct, procure, or attempt to procure B to do any act which is prohibited by this Ordinance, or
 - (b) in any other case, cause, induce, or attempt to induce B to do any act which is prohibited by this Ordinance, including by providing or offering B with any benefit, or by subjecting or threatening to subject B to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1) (b) because it is not made directly to B, if it is made in such a way that B is likely to hear of it.

(3) Proceedings in respect of a contravention of subsection (1) shall be brought only by the Employment and Equal Opportunities Service in accordance with Part IX.

PART V

CONDUCT PROHIBITED AT WORK

Employees and applicants for employment.

14. (1) An employer ("A") must not discriminate against a person ("B") —

- (a) in the arrangements A makes for the purposes of deciding to whom to offer employment or work experience,
 - (b) as to the terms on which A offers B employment or work experience,
 - (c) by not offering B employment or work experience.
- (2) An employer ("A") must not discriminate against an employee of A's ("B") –
- (a) as to B's terms of employment,
 - (b) by denying B access, or limiting B's access, to opportunities for promotion, re-grading, transfer or training or to any other benefit associated with employment,
 - (c) by dismissing B,
 - (d) in the arrangements A makes for the purposes of deciding who to make redundant, or
 - (e) by subjecting B to any other detriment.
- (3) An employer must not victimise a person or employee, as the case may be, in any of the ways or circumstances set out in subsection (1)(a) to (c) or 2(a) to (e).
- (4) An employer ("A") must not harass a person ("B") –

- (a) who is an employee of A's, or
- (b) who has applied to A for employment or work experience.

(5) For the purposes of paragraphs (1) and (2) it is immaterial whether the work is casual.

(6) In this Ordinance —

(a) "**employee**" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment, and, for the avoidance of doubt, does not include an individual who is a volunteer,

(b) "**employer**", in relation to an employee, means the person by whom the employee is (or where the employment has ceased, was) employed,

(c) "**employment**" means employment under a contract of employment, and related expressions shall be construed accordingly.

Employers: requests for information.

15. (1) A person ("A") shall not request or require information about a protected ground from another person ("B") during a recruitment process under this Part, which indicates, or might reasonably be understood as indicating, an intention by A to do any act which is or might be prohibited by this Ordinance.

(2) Subsection (1) does not apply to a request for information if —

- (a) the intended act would not in fact be prohibited by this Ordinance, or
 - (b) the information is used wholly as part of A's diversity monitoring, is kept confidential, and forms no part of the recruitment process.
- (3) Proceedings in respect of a contravention of subsection (1) shall be brought by the Employment and Equal Opportunities Service in accordance with Part IX.
- (4) In this section —
- (a) "**recruitment process**" means a process which an employer ("A") undertakes because A wishes to employ a person or have them work for A by way of work experience, and includes, without limitation, the process of advertising for a post, sifting applications, selection of candidates for interview, interviewing, job offers and negotiation of an employment contract, and
 - (b) "**diversity monitoring**" means the recording by an employer of information relating to one or more of a person's protected grounds in the course of a recruitment process, for purposes related to the promotion by the employer of diversity in the employer's workforce.

Employers: equal pay.

16. (1) This section is without prejudice to section 14.

- (2) This section applies where –
 - (a) a person ("A") with a particular protected ground is employed to do work that is equal to work that a comparator who does not have the particular protected ground ("B") does,
 - (b) B is employed by A's employer or by an associate of A's employer,
 - (c) both A and B are employed in Guernsey, and
 - (d) B and A were employed within 3 years of each other.
- (3) For the avoidance of doubt, B must be a real person.
- (4) For the purposes of this section, employers are associated if –
 - (a) one is a legal person of which the other (directly or indirectly) has control, or
 - (b) both are legal persons of which a third person (directly or indirectly) has control.
- (5) Where this section applies, if the terms of A's work do not (by whatever means) include an equal pay clause, they shall be treated as including one.
- (6) An equal pay clause is a provision which relates to pay or any other financial benefit relating to the employment (including, for the avoidance of doubt, membership of or rights under an occupational pension scheme) that has the following effect –

- (a) if a term of A's contract is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable,
 - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.
- (7) For the purposes of this section, A's work is equal to that of B's if —
- (a) A's and B's work are the same or broadly similar, and
 - (b) such differences as there are between their work are not of practical importance, having regard to the frequency with which differences between their work occur in practice and the nature and extent of the differences.

Employers: equal treatment.

17. (1) This section is without prejudice to section 14.
- (2) This section applies where —
- (a) a person ("A") with a particular protected ground is employed to do work that is not materially different to work that a comparator who does not have the particular protected ground ("B") does,
 - (b) B is employed by A's employer or by an associate of A's employer,

- (c) both A and B are employed in Guernsey, and
- (d) B and A were employed within 3 years of each other.

(3) For the purpose of making the comparison in subsection (2), B need not be a real person.

- (4) For the purposes of this section, employers are associated if –
- (a) one is a legal person of which the other (directly or indirectly) has control, or
 - (b) both are legal persons of which a third person (directly or indirectly) has control.

(5) Where this section applies, if the terms of A's work do not (by whatever means) include an equal treatment clause, they shall be treated as including one.

(6) An equal treatment clause is a provision which relates to the terms and conditions of employment other than pay (including, for the avoidance of doubt, working hours, holiday entitlement and entitlement to breaks) that has the following effect –

- (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable,
- (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

(7) For the purposes of this section, A's work is equal to that of B's if —

- (a) A's and B's work are the same or broadly similar, and
- (b) such differences as there are between their work are not of practical importance, having regard to the frequency with which differences between their work occur in practice and the nature and extent of the differences.

Discussions about pay.

18. (1) A term of a person's contract of employment that purports to prevent or restrict the person ("P") from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P insofar as P makes or seeks to make a relevant pay disclosure.

(2) A term of a person's contract of employment that purports to prevent or restrict the person ("P") from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P insofar as P seeks a relevant pay disclosure from the colleague, and "**colleague**" includes a former colleague in relation to the work in question.

(3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected ground.

(4) The following are to be treated as protected acts for the purposes of the relevant victimisation provisions in Part IV —

- (a) seeking a disclosure that would be a relevant pay disclosure,
- (b) making or seeking to make a relevant pay disclosure, or
- (c) receiving information disclosed in a relevant pay disclosure.

Contract workers.

19. (1) A principal ("A") must not, in relation to contract work for A, discriminate against a contract worker ("B") —

- (a) as to the terms on which A allows B to do the work,
- (b) by not allowing B to do the work, or continue to do it,
- (c) by denying B access, or limiting B's access, to any benefits, facilities or services in relation to the work (including, without limitation, benefits consisting of the payment of money), or
- (d) by subjecting B to any other detriment.

(2) A principal ("A") must not, in relation to contract work for A, victimise a contract worker ("B") in any of the ways or circumstances set out in paragraphs (a) to (d) of subsection (1).

(3) A principal ("A") must not, in relation to contract work for A, harass a contract worker ("B").

(4) In this section —

- (a) "**principal**" means a person who makes work available for an individual who is —
 - (i) employed by another person, and
 - (ii) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it),
- (b) "**contract work**" is work such as is mentioned in paragraph (a), and
- (c) a "**contract worker**" is an individual supplied to a principal in furtherance of a contract such as is mentioned in paragraph (a)(ii).

Employment agencies.

20. (1) An employment agency ("A") must not discriminate against a person ("B") —
- (a) in the arrangements A makes for selecting persons to whom to provide any of the services of an employment agency,
 - (b) as to the terms on which A offers to provide any service to B, or the terms on which A provides any service to B,
 - (c) by not offering to provide a service to B,

(d) by terminating the provision of a service to B, or

(e) by subjecting B to any other detriment.

(2) An employment agency must not, in relation to the provision of any of its services, victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (e).

(3) An employment agency must not, in relation to the provision of any of its services, harass a person.

(4) References in subsection (1) to the services of an employment agency include guidance on careers and any other services relating to employment, including training.

(5) An employment agency is not subject to any liability under subsection (1) if it proves in relation to the relevant action —

(a) that it acted in reliance on a statement made to it by the employer to whom it is endeavouring to supply with persons to do work to the effect that the action is not prohibited by any provision of this Ordinance, and

(b) that it was reasonable for it to rely on the statement.

(6) A person who knowingly or recklessly makes a statement such as is referred to in subsection (5)(a) which in a material respect is false or misleading is liable to proceedings brought by the Employment and Equal Opportunities Service in accordance with Part IX.

Vocational training providers.

21. (1) A provider or arranger of vocational training ("A") must not discriminate against a person ("B") —

- (a) in the arrangements A makes for selecting persons to whom to provide training,
- (b) as to the terms on which A offers to provide the training or other facilities concerned with such training to B, or the terms on which A provides the training or other facilities to B,
- (c) by not offering to provide training to B,
- (d) by terminating B's training, or
- (e) by subjecting B to any other detriment during the course of the training.

(2) A provider or arranger of vocational training must not, in relation to the provision of any of its services, victimise a person in any of the ways or circumstances set out in subsection (1).

(3) A provider or arranger of vocational training must not, in relation to the provision of any of its services, harass a person.

(4) In this section, "**vocational training**" means training for employment.

Partnerships.

22. (1) A partnership ("A") must not discriminate against a person ("B") –

(a) in the arrangements A makes for the purposes of determining to whom to offer the position of partner,

(b) as to the terms on which A offers B that position,

(c) by not offering B that position, or

(d) in a case where B already holds that position –

(i) by denying B access, or limiting B's access, to any benefit (including, without limitation, benefits consisting of the payment of money), arising from being a partner in the partnership,

(ii) by expelling B from the partnership, or

(iii) by subjecting B to any other detriment.

(2) Subsection (1) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a partnership.

(3) A partnership must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (d).

(4) A partnership ("A") must not harass a person ("B") –

(a) who is a partner within the partnership, or

- (b) who has applied to A for admission to the partnership, or who the partnership are considering inviting to become a partner.

(5) In this Ordinance, "**partnership**" means —

- (a) a partnership under the Partnership (Guernsey) Law, 1995^e,
- (b) a limited partnership under the Limited Partnerships (Guernsey) Law, 1995^f, in which case references in this section to a partner shall be construed as references to a general partner,
- (c) a limited liability partnership under the Limited Liability Partnerships (Guernsey) Law, 2013, in which case references in this section to a partner shall be construed as references to a member, and
- (d) any other partnership operating in Guernsey that is established under the law of a country or territory outside Guernsey.

^e Ordres en Conseil Vol. XXXI, p. 179.

^f Ordres en Conseil Vol. XXXVI, p.264; amended by Ordres en Conseil Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G. S. I. No 89 of 2008; No. 51 of 2016; and No. 69 of 2020.

Personal office holders.

23. (1) A personal office is an office or post —
- (a) to which a person is appointed to discharge a function personally under the direction of another person, and
 - (b) in respect of which an appointed person is entitled to remuneration.
- (2) For the purposes of subsection (1)(a), a person is to be regarded as discharging functions personally under the direction of another person if that other person is entitled to direct the person as to when and where to discharge the functions.
- (3) For the purposes of subsection (1)(b), a person is not to be regarded as entitled to remuneration merely because the person is entitled to payments —
- (a) for expenses incurred by the person in discharging the functions of the office or post, or
 - (b) by way of compensation for the loss of income or benefits the person would or might have received had the person not been discharging the functions of the office or post.
- (4) If a person appointed to a personal office is also an employee they shall be treated as an employee for the purposes of this Ordinance.
- (5) A person ("A") who has the power to make an appointment to a personal office must not discriminate against a person ("B") —

- (a) in the arrangements A makes for deciding to whom to offer the appointment,
- (b) as to the terms on which A offers B the appointment, or
- (c) by not offering B the appointment.

(6) A person ("A") who has the power to make an appointment to a personal office must not victimise a person ("B") in any of the ways or circumstances set out in subsections (5)(a) to (c).

(7) A person who has the power to make an appointment to a personal office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

(8) A person who is a relevant person in relation to a personal office must not discriminate against a person ("B") appointed to the office —

- (a) as to the terms of B's appointment,
- (b) by denying B access, or limiting B's access, to opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service,
- (c) by terminating B's appointment, or
- (d) by subjecting B to any other detriment.

(9) A relevant person in relation to a personal office, must not, in relation to that office, victimise a person ("B") in any of the ways or circumstances set out in subsections (8)(a) to (d).

(10) A relevant person in relation to a personal office must not, in relation to that office, harass a person appointed to it.

(11) A person is a relevant person in relation to a personal office if the person has the power to —

- (a) decide the terms of appointment to a personal office,
- (b) grant access to opportunities for promotion, transfer or training or to any other benefit, facility or service connected with the personal office, or
- (c) terminate an appointment to a personal office.

Public office holders.

24. (1) A public office is an office or post, appointment to which is made by, on the recommendation of, or subject to the approval of —

- (a) the States of Deliberation,
- (b) the States of Election,
- (c) the States or any Committee thereof, or
- (d) the Royal Court.

but does not include the office of People's Deputy.

(2) If a person appointed to a public office is also an employee that person shall be treated as an employee for the purposes of this Ordinance.

(3) A person ("A") who has the power to make an appointment to a public office must not discriminate against a person ("B") –

- (a) in the arrangements A makes for deciding to whom to offer the appointment,
- (b) as to the terms on which A offers B the appointment, or
- (c) by not offering B the appointment.

(4) A person ("A") who has the power to make an appointment to a public office must not victimise a person ("B") in any of the ways or circumstances set out in subsections (3)(a) to (c).

(5) A person who has the power to make an appointment to a public office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

(6) Subject to subsection (9), a person who is a relevant person in relation to a public office must not discriminate against a person ("B") appointed to the office –

- (a) as to the terms of B's appointment,
- (b) by denying B access, or limiting B's access, to opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service,
- (c) by terminating B's appointment, or
- (d) by subjecting B to any other detriment.

(7) A relevant person in relation to a public office, must not, in relation to that office, victimise a person ("B") in any of the ways or circumstances set out in subsections (6)(a) to (d).

(8) A relevant person in relation to a public office must not, in relation to that office, harass a person appointed to it.

(9) If the relevant person in relation to a public office —

- (a) is a member of the States of Deliberation or the States of Election, or a representative of the Royal Court, and
- (b) the relevant person makes a decision to terminate a person's appointment to a public office,

then the relevant person is not subject to any liability under subsection (6) in respect of the decision.

(10) A person is a relevant person in relation to a public office if the person has the power to —

- (a) decide the terms of appointment to a public office,
- (b) grant access to opportunities for promotion, transfer or training or to any other benefit, facility or service connected with the public office, or
- (c) terminate an appointment to a public office.

Professional or trade organisations.

25. (1) A professional or trade organisation is —

- (a) an organisation of employees,
- (b) an organisation of employers, or
- (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) A professional or trade organisation ("A") must not discriminate against a person ("B") –

- (a) in the arrangements A makes for deciding to whom to offer membership,
- (b) as to the terms on which it is prepared to admit B as member, or
- (c) by not accepting B's application for membership.

(3) A professional or trade organisation ("A") must not discriminate against a member ("B") –

- (a) by denying B access, or limiting B's access, to opportunities for receiving a benefit, facility or service provided by the professional or trade organisation,
- (b) by depriving B of membership or varying the terms of membership, or
- (c) by subjecting B to any other detriment.

(4) A professional or trade organisation must not victimise a person or member, as the case may be, in any of the ways or circumstances set out in subsections (2)(a) to (c) or (3)(a) to (c).

(5) A professional or trade organisation must not harass —

- (a) a member, or
- (b) an applicant for membership.

Professional bodies.

26. (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,
- (b) as to the terms on which it is prepared to confer a relevant qualification or authorisation on B,
- (c) by not conferring a qualification or authorisation on B.

(2) A professional body ("A") must not discriminate against a person ("B") on whom A has conferred a relevant qualification or authorisation —

- (a) by withdrawing the qualification or authorisation from B, or
- (b) by varying the terms on which B holds the qualification or authorisation, or
- (c) by subjecting B to any other detriment.

(3) A professional body must not victimise a person in any of the ways or circumstances set out in subsections (1)(a) to (c) or (2)(a) to (c).

(4) A professional body must not harass —

(a) a person who holds a qualification or authorisation, or

(b) a person who applies for a qualification or authorisation.

(5) In this section—

(a) **"a professional body"** means an authority or body that is empowered to confer, extend, renew or withdraw a qualification or authorisation, that is needed for or facilitates engagement in a particular profession, trade or occupation, and

(b) **"qualification or authorisation"** includes recognition, registration, enrolment, approval or certification.

PART VI

CONDUCT PROHIBITED IN OTHER CIRCUMSTANCES

Goods and services.

27. (1) A service provider ("A") must not discriminate against another person ("B") —

(a) by refusing to provide goods, services or facilities to B,

(b) as to the terms on which A provides goods, services or facilities to B,

(c) in the manner in which A provides B with goods services, or facilities, or

(d) by terminating the provision of goods, services or facilities to B, including by requiring B to leave premises.

(2) A service provider must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (d).

(3) A service provider must not harass a person —

(a) requiring the service, or

(b) a person to whom the service provider provides the service.

(4) Nothing in this section requires a service provider to take a step which would fundamentally alter —

(a) the nature of the service, or

(b) the nature of A's trade or profession.

(5) In this Ordinance —

(a) "**service provider**" means a person who provides goods, services or facilities to the public or a section of the public (for payment or not), and

- (b) "**facilities**" includes access to premises or vehicles which is granted to the public or a section of the public (for payment or not).

Education.

28. (1) The responsible body of a school or education provider ("A") must not discriminate against another person ("B") –

- (a) in the arrangements A makes for deciding who is offered admission as a student,
- (b) as to the terms on which A offers to admit B as a student, or
- (c) by not admitting B as a student.

(2) The responsible body of a school or education provider ("A") must not discriminate against a student ("B") –

- (a) in the way A provides education to B,
- (b) by denying B access, or limiting B's access, to any benefit, facility or service,
- (c) by expelling B, or
- (d) by subjecting B to any other detriment.

(3) The responsible body of a school or education provider must not victimise a person in any of the ways or circumstances set out in subsections (1)(a) to (c) or (2)(a) to (d).

(4) The responsible body of a school or education provider must not harass —

- (a) a student, or
- (b) a person who has applied for admission as a student.

(5) Nothing in this section requires the responsible body of a school or education provider to take a step which would fundamentally alter the nature of the educational service provided.

(6) In this Ordinance —

- (a) "**education provider**" means —
 - (i) an educational institution in Guernsey, or
 - (ii) an organisation which develops or accredits curricula or training courses for use by a school or educational institution in Guernsey,
- (b) "**school**" has the meaning given in section 1 of the Education (Guernsey) Law, 1970,
- (c) "**educational institution**" means an institution in Guernsey at which education is provided for five or more students of any age, not being a school, and for the avoidance of doubt includes registered pre-schools and day nurseries,

- (d) **"responsible body"** means the governing body or the proprietor of the school or education provider, as the case may be.

Clubs and associations.

29. (1) A club or association ("A") must not discriminate against another person ("B") –

- (a) in the arrangements A makes for deciding to whom to offer membership,
- (b) as to the terms on which A offers B membership, or
- (c) by not offering B membership.

(2) A must not discriminate against a member of the club or association ("B") –

- (a) in the terms of membership that are afforded to B,
- (b) by refusing or failing to accept B's application for a particular class or type of membership,
- (c) by denying B access, or limiting B's access, to any benefit, facility or service provided by the club or association,
- (d) by depriving B of membership, or
- (e) by subjecting B to any other detriment.

(3) A club or association must not victimise a person in any of the ways or circumstances set out in sections 29(1)(a) to (c) or (2)(a) to (e).

(4) A club or association must not harass —

(a) a member, or

(b) a person who has applied for membership.

(5) Nothing in this section requires a club or association to take a step which would fundamentally alter the nature of the club or association.

(6) 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.

Accommodation.

30. (1) An accommodation provider ("A") must not discriminate against another person ("B") —

(a) as to the terms on which A offers to dispose of premises to B,

(b) by not disposing of premises to B,

(c) in A's treatment of B with respect to things done in relation to other persons seeking premises,

- (d) by not giving permission for the disposal of premises to B,
 - (e) by denying B access, or limiting B's access, to any benefit, facility or service provided by the accommodation provider,
 - (f) by evicting B (or taking steps for the purpose of securing B's eviction), or
 - (g) by subjecting B to any other detriment in respect of the provision of accommodation.
- (2) Subsection (1) does not apply to anything done in the exercise of a judicial function.
- (3) An accommodation provider must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (g).
- (4) An accommodation provider must not harass, in relation to premises —
- (a) a person who occupies premises,
 - (b) a person who applies to occupy premises,
 - (c) a person who applies for permission to dispose of premises, or
 - (d) a person to whom a disposal would be made if permission was given.

- (5) For the purposes of this section —
- (a) a reference to premises is a reference to the whole or part of the premises, and
 - (b) a reference to disposing of premises includes, in the case of premises subject to a tenancy, a reference to —
 - (i) assigning the premises,
 - (ii) sub-letting them, or
 - (iii) parting with possession of them.

(6) Nothing in this section requires an accommodation provider to take a step which would fundamentally alter —

- (a) the nature of the accommodation service provided, or
- (b) the nature of A's trade or profession.

(7) In this Ordinance, "**accommodation provider**" means a person who has the right to dispose of premises, a person whose permission is required for the disposal of premises and a person who manages premises, and for the avoidance of doubt includes any person who has the right to provide commercial or residential property to another person whether by way of sale, tenancy or otherwise (including by granting a right to occupy).

PART VII

DUTIES

Duty to make reasonable adjustments for a disabled person.

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

- (a) an employer, including in relation to a person who has applied to the employer for employment or work experience,
- (b) a principal,
- (c) an employment agency,
- (d) a provider or arranger of vocational training,
- (e) a partnership, including in relation to a person who has applied for admission to the partnership, or who the members of the partnership are considering inviting to become a partner,
- (f) a person who has the power to make an appointment to a personal office, in relation to a person seeking, or being considered for, the appointment,
- (g) a relevant person in relation to a personal office,

- (h) a person who has the power to make an appointment to a public office, in relation to a person seeking, or being considered for, the appointment,
- (i) a relevant person in relation to a public office,
- (j) a professional or trade organisation, including in relation to an applicant for membership,
- (k) a professional body, including in relation to a person who applies for a qualification or authorisation,
- (l) subject to section 32, a service provider,
- (m) subject to section 32, a school or education provider,
- (n) an accommodation provider, (save that the duty under paragraph (2)(b) does not apply to landlords, in respect of whom sections 33-35 apply), and
- (o) a club or society, including in relation to an applicant for membership.

(2) The duty to make reasonable adjustments for a disabled person is set out in paragraphs (a) to (c) below, and, in this section, a person on whom the duty is imposed referred to as ("A") —

- (a) where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take

such steps as it is reasonable to have to take to avoid the disadvantage,

- (b) where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage,
- (c) where a disabled person would, but for the provision of an disability aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the disability aid.

(3) Before A takes such steps as it is reasonable to have to take to avoid the disadvantage as set out in paragraphs (2)(a) to (c), A must consult the disabled person to ask their view as to what steps would avoid the disadvantage, and may also consult such other persons as A considers appropriate.

(4) In this section, a disability aid, in relation to a person with a disability, means equipment or a service that —

- (a) is used by the person, and
- (b) provides assistance to alleviate the effect of the disability.

(5) Subject to subsection (6), a failure on the part of A to take steps to avoid a disadvantage to a disabled person as set out in paragraphs (2)(a) to (c) is a failure to comply with a duty to make reasonable adjustments, and A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

- (6) A does not discriminate against a disabled person if —
- (a) A fails to take steps to avoid a disadvantage to a disabled person as set out in paragraphs (2)(a) to (c) if to do so would be a disproportionate burden on A, or
 - (b) A (not being a service provider or a school or education provider, in respect of whom section 32 applies) does not know and could not reasonably be expected to know that the disabled person has a disability.
- (7) A may not require a disabled person to pay any or all of A's costs of complying with a duty to make reasonable adjustments.
- (8) For the purposes of this Part, a physical feature means —
- (a) a feature arising from the design or construction of a building,
 - (b) a feature of an approach to, exit from or access to a building, or
 - (c) a fixture or fitting in or on premises.
- (9) The Committee may by regulation amend the definition of physical feature in subsection (8), including to specify other physical elements or qualities which are physical features.
- (10) For the purposes of paragraph (2)(b), avoiding the substantial disadvantage includes —
- (a) removing the physical feature in question,

- (b) altering it, or
- (c) providing a reasonable means of avoiding it.

(11) In this Part, "**substantial**" means more than minor or trivial.

Reasonable adjustments: service providers, schools and education providers.

32. (1) With respect to the duty of a service provider to make reasonable adjustments for a disabled person, section 31(2) has effect as if, —

(a) the references in section 31(2)(a) to (c) to a disabled person are to disabled persons generally, and

(b) in paragraph (b) for "to avoid the disadvantage" there were substituted —

"(i) to avoid the disadvantage, or

(ii) to adopt a reasonable alternative method of providing the service."

(2) With respect to the duty of a school or education provider to make reasonable adjustments for a disabled person, section 31(2) has effect as if the references in section 31(2)(a) to (c) to a disabled person were to disabled persons generally.

Duty to carry out minor improvements: landlords.

33. (1) A landlord ("L") is under a duty to carry out minor improvements to property for a disabled person who is L's tenant ("T") as described in subsection (2) in the circumstances set out therein.

(2) The duty applies where the lack of a minor improvement to a property puts T at a substantial disadvantage in comparison with persons who are not disabled, and the duty is for L to carry out the minor improvement.

(3) The Committee may by regulation amend the definition of minor improvement in subsection (7).

(4) Subject to subsection (5), L discriminates against T if L fails to comply with the duty under subsection (1) in respect of T.

(5) L does not discriminate against T if L fails to carry out minor improvements if to do so would be a disproportionate burden on L.

(6) L may not require T to pay any or all of L's costs of complying with a duty to make minor improvements.

(7) In this section, "**minor improvement**" means any of the following —

- (a) the replacement or provision of a sign or notice,
- (b) the replacement of a tap or door handle,
- (c) the replacement, provision or adaptation of a doorbell or door entry system, and
- (d) changes to the colour of any wall, door or other surface.

(8) For the avoidance of doubt, for the purposes of this section it does not matter whether the property disposed of by way of tenancy is commercial premises or residential premises.

Duty to allow reasonable adjustments to physical features: residential landlords.

34. (1) A landlord ("L") is under a duty to allow reasonable adjustments to physical features for a disabled person who is L's tenant ("T") as described in subsection (2) in the circumstances set out in therein.

(2) The duty to allow reasonable adjustments for T applies where —

- (a) the accommodation provided by L to T is T's principal residence, and
- (b) a physical feature of the accommodation puts T at a substantial disadvantage in comparison with persons who are not disabled,

and the duty is for L to not unreasonably refuse permission for T to carry out works which are listed on the prescribed list of works which would alleviate the effect of T's disability.

(3) In granting permission for reasonable adjustments to a physical feature which is on the prescribed list of works, L may require T —

- (a) to pay any or all of the costs of any works on the prescribed list of works undertaken under this section,
- (b) to engage an appropriately qualified tradesperson to undertake the work on the prescribed list of works, and
- (c) to restore the property to its original condition at the end of the tenancy.

(4) An unreasonable refusal of permission to carry out works on the prescribed list of works on the part of L is a failure to comply with a duty to make reasonable adjustments, and L discriminates against a disabled person if L fails to comply with that duty in relation to that person.

(5) In this section the "**prescribed list of works**" means —

- (a) an alteration to, or the addition of, fixtures and fittings (including, without limitation, grab rails, special bathroom or sanitary fittings and stair lifts),
- (b) an alteration or addition to a physical feature connected with the provision of services to the accommodation, or
- (c) any other adjustment to a physical feature which the Committee prescribes by regulation for the purposes of this section.

Duty to allow reasonable adjustments to physical features: commercial landlords.

35. (1) A landlord ("L") is under a duty to allow reasonable adjustments to physical features for a disabled person who is L's tenant ("T") as described in subsection (2) in the circumstances set out in therein.

(2) The duty to allow reasonable adjustments for T applies where —

- (a) the accommodation provided by L to T is commercial premises, and

- (b) a physical feature of the accommodation puts T at a substantial disadvantage in comparison with persons who are not disabled,

and the duty is for L to not unreasonably refuse permission for T to carry out reasonable adjustments to a physical feature which would alleviate the effect of T's disability.

(3) In granting permission for reasonable adjustments to a physical feature, L may require T –

- (a) to pay any or all of the costs of any works on the prescribed list of works undertaken under this section,
- (b) to engage an appropriately qualified tradesperson to undertake the work on the prescribed list of works, and
- (c) to restore the property to its original condition at the end of the tenancy.

(4) An unreasonable refusal of permission to carry out works on the prescribed list of works on the part of L is a failure to comply with a duty to make reasonable adjustments, and L discriminates against a disabled person if L fails to comply with that duty in relation to that person.

(5) In this Ordinance, "**commercial premises**" means any premises which do not fall within a residential use class within the meaning of Schedule 1 to the Land Planning and Development (Use Classes) Ordinance, 2017.

Disability: public sector duty to prepare accessibility action plans.

36. (1) The Committee may by regulation provide for a duty on public sector service providers and public sector school or education providers to prepare and implement an accessibility action plan, and regulations may, without limitation —

- (a) set out codes of practice in relation to accessibility action plans as set out in section 65,
- (b) provide for the Employment and Equal Opportunities Service to be able to issue a non-discrimination notice where a public sector service, school or education provider has not prepared or implemented an accessibility action plan,
- (c) provide that the duty does not apply in relation to access to ancient monuments.

(2) In this section —

- (a) "**accessibility action plan**" means a reasonable and adequate plan, proportionate to the size and financial and other circumstances of the service provider, school or education provider, in which the service provider, school or education provider sets out how they will improve access for disabled people to their service,
- (b) "**ancient monument**" means a protected monument within the meaning of the Land Planning and Development Law, 2005,

- (c) "**public sector service provider**" means a service provider which is owned, maintained, managed, funded or under the authority of the States or any Committee thereof, but does not include a service provider who receives partial funding from the States by way of grant, loan or otherwise,
- (d) "**public sector school or education provider**" means a school or education provider which is maintained by the States, and for the avoidance of doubt does not include —
 - (i) an independent school within the meaning given in section 1 of the Education (Guernsey) Law, 1970,
 - (ii) a school in respect of which grants are made by the States, or
 - (iii) a private education provider.

Disability: accessibility of the public highway.

37. (1) The States of Guernsey is under a duty in relation to disabled people as set out in subsection (2) in the circumstances set out therein.

(2) The duty is, where the States of Guernsey is constructing, altering or repairing a public highway, or where the States has engaged or will engage a contractor to construct, alter or repair a public highway —

- (a) for the States to consider how the section of public highway which is being constructed, altered or

repaired could be made more accessible for disabled people, and

(b) for the States to make any changes it considers appropriate to the section of public highway which will increase accessibility for disabled people.

(3) For the avoidance of doubt, the public highway is not a physical feature within the meaning of section 31(8) (duty to make reasonable adjustments for a disabled person).

(4) Proceedings in respect of a contravention of this section shall be brought only by the Employment and Equal Opportunities Service in accordance with Part IX.

(5) In this section, "**public highway**" means any road, street, lane or public place over which the public has, under the law of the Island, the right to pass and repass without let or hindrance, whether on foot or with animals or vehicles.

PART VIII

COMPLAINTS PROCEDURE AND THE TRIBUNAL

Restriction of proceedings for contravention of this Ordinance.

38. Except as provided by this Ordinance, no proceedings, whether civil or criminal, lie against any person in respect of an act by reason that the act is prohibited by any provision this Ordinance.

Notification of potential complaint – goods and services etc.

39. (1) A person ("A") who considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed in the

circumstances set out in section 27, 28, 29 or 30 must, before making a complaint under section 41 —

- (a) within six weeks of the act occurring notify B in writing of the potential complaint, and
- (b) inform B that, if the potential complaint is not resolved within one month of the notification to B, A may exercise their right to make a complaint under this Ordinance.

(2) A may not make a complaint under section 41 until the one month period referred to in subsection (1)(b) has elapsed.

Pre-complaint conciliation.

40. (1) If a person ("A") considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed, at any time prior to A making a complaint under this Ordinance, A and B may agree to engage in pre-complaint conciliation by making a request of the Employment and Equal Opportunities Service, and if they do so agree, section 42(2) will apply in relation to the time period for bringing a complaint.

(2) In this section "**pre-complaint conciliation**" means a voluntary process in which the Employment and Equal Opportunities Service uses its best endeavours to settle the potential complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, which ends when either —

- (a) a settlement has been reached, or
- (b) either A or B notifies the other that they no longer wish to participate in pre-complaint conciliation.

Making of complaints to the Tribunal.

41. (1) A complaint by any person ("**the complainant**") that another person ("**the respondent**") –

(a) has committed an act against the complainant which is prohibited by any provision of this Ordinance or

(b) is, by virtue of section 66, to be treated as having committed such an act against the complainant,

may be made to the Employment and Discrimination Tribunal ("**the Tribunal**") by being presented to the Secretary to the Tribunal ("**the Secretary**").

(2) If section 39 applies, the complainant shall confirm to the Secretary that it has been complied with.

(3) The Secretary, on receipt of the complaint, shall immediately transmit it –

(a) to the Employment and Equal Opportunities Service in accordance with the provisions of section 46(1), and

(b) to the Convenor of the Panel to enable the appointment of a Tribunal under the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, to hear and determine the complaint.

(4) In this Ordinance "**the Panel**" means the Employment and Discrimination Panel maintained under and in accordance with the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.

Time limit for presenting complaints.

42. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless it is presented to the Secretary —

- (a) subject to subsection (2), within a period of three months beginning on the day when the act complained of was done, or
- (b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the complainant presented to the Secretary, allow in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within 3 months.

(2) The three month period specified in subsection (1)(a) is extended by any period in which the parties are engaged in pre-complaint conciliation.

(3) The Secretary, on receipt of an application for further time under subsection (1)(b), shall immediately transmit it to the Convenor of the Panel (or if the Convenor is unavailable, the Deputy Convenor) to enable the appointment, from the membership of the Panel, of a Tribunal (constituted by a single member) to hear and determine the application.

(4) Where the Tribunal, on an application under section 1(b) decides that further time should or should not be allowed for the presentation of a complaint —

- (a) the Tribunal's decision is subject to appeal in accordance with section 53, and

- (b) If the Tribunal (or the Royal Court on appeal) determines that further time should be allowed for the presentation of the complaint, the single member of the Tribunal who heard the application for further time shall not be appointed as one of the members of the Tribunal who are to hear and determine the complaint.

Form of complaints.

43. (1) A complaint under this Ordinance, an application for further time under section 42(1)(b) or a confirmation that section 39 has been complied with —

- (a) shall be presented to the Secretary in such form and manner, and
- (b) shall be supported by such information and documents,

as the Secretary may require either generally or in relation to a particular case.

(2) At any time after the receipt of a complaint or application for further time, the Secretary may require the complainant or applicant to provide such additional information and documents as the Secretary sees fit.

Refusal to hear complaints.

44. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless satisfied that the provisions of section 46 have been complied with.

(2) The Tribunal shall not hear and determine a complaint under this Ordinance or an application for further time under section 42(1)(b) if the

complainant or applicant and respondent have signed a settlement agreement or a compromise agreement.

(3) The Tribunal may refuse to hear and determine a complaint under this Ordinance or an application for further time under section 42(1)(b) –

- (a) if any provision of, or requirement imposed under, section 43(1) or (2) is not complied with, or
- (b) if the Tribunal is satisfied that the parties have, otherwise than as mentioned in subsection (2), settled the complaint by legally binding agreement.

(4) A settlement agreement –

- (a) is binding on the parties, and
- (b) in so far as it provides for any payment to be made –
 - (i) is enforceable as a judgment debt by the person to whom the payment is to be made against the other party, and
 - (ii) subject to the provisions of the agreement, carries interest at the rate for the time being prescribed under section 2 of the Judgements (Interest) (Bailiwick of Guernsey) Law, 1985 from the date of the agreement until the payment is satisfied; and the interest may be recovered as part of the payment.

(5) A compromise agreement must satisfy the following conditions —

- (a) the agreement is in writing,
- (b) the agreement relates to the particular complaint,
- (c) the complainant has received advice from an independent adviser as to the terms and effect of the proposed agreement and in particular its effect on the complainant's ability to pursue a complaint before the Tribunal,
- (d) the agreement identifies the adviser, and
- (e) the agreement states that the conditions set out in paragraphs (a) to (d) are satisfied.

(6) This section is without prejudice to the Employment and Discrimination Tribunal (Guernsey) Order, 2020.

(7) In this section —

- (a) "**independent adviser**" means a lawyer, a representative of a trade union or person of another description specified in an Order of the Committee, and
- (b) "**lawyer**" means —
 - (i) an Advocate of the Royal Court,

- (ii) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, or
- (iii) a Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland, or of Scotland.

(8) In this Ordinance —

- (a) "**settlement agreement**" means an agreement countersigned by the Employment and Equal Opportunities service stating that the parties have settled the complaint, and
- (b) "**compromise agreement**" means an agreement to refrain from instituting or continuing any proceedings before the Tribunal which satisfies the conditions set out in subsection (5).

Time when act complained of is done.

45. For the purposes of this Part of the Ordinance —

- (a) without prejudice to the operation of sections 16(5) and 17(5), where including a term in a contract is an act which is prohibited by any provision of this Ordinance, that act shall be treated as extending throughout the duration of the contract,

- (b) other than when paragraph (a) applies, any act extending over a period shall be treated as done at the end of that period, and
- (c) a deliberate omission shall be treated as done when the person ("P") decided upon it

and, in the absence of evidence establishing the contrary, P shall be taken for the purpose of paragraph (c) to decide upon an omission —

- (i) when P does an act inconsistent with doing the omitted act, or
- (ii) if P has done no such inconsistent act, when the period expires within which P might reasonably have been expected to do the omitted act.

Conciliation services.

46. (1) When a complaint under this Ordinance is presented to the Secretary under section 41(1), the Secretary shall immediately transmit it to the Employment and Equal Opportunities Service which shall —

- (a) use its best endeavours to settle the complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, and thereafter
- (b) pass the complaints to the Secretary —

- (i) if, in its opinion, the complaint cannot be settled by the methods set out in paragraph (a), or
- (ii) in any case, if the complaint is not settled within six weeks of being transmitted to it (or, if an application for further time has been made under section 42(1)(b), within six weeks of final disposal of that application), unless in its opinion conciliation or negotiations are in progress with a view to a settlement.

(2) Where the Employment and Equal Opportunities Service passes a complaint to the Secretary under subsection 1(b), the Secretary shall inform the Convenor of the Panel of the fact and the Convenor (of, if the Convenor is unavailable, the Deputy Convenor) shall, subject to section 42(4)(b), appoint from the membership of the Panel, a Tribunal constituted by three members to hear and determine the complaint.

(3) The opinion of the Employment and Equal Opportunities service as to the matters set out in subsection (1)(b) is final.

(4) Nothing communicated to the Employment and Equal Opportunities Service or any officer thereof in relation to the performance of their functions under subsection (1)(a) is admissible in evidence in any proceedings before the Tribunal except with the consent of the person who so communicated it.

Burden of proof before the Tribunal.

47. (1) This section applies to any complaint under this Ordinance made to the Tribunal under section 41.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent ("R") —

- (a) has committed an act against the complainant which is prohibited by any provision of this Ordinance, or
- (b) is, by virtue of section 66, to be treated as having committed such an act against the complainant,

the Tribunal shall uphold the complaint unless R proves that R did not commit, or, as the case may be, is not to be treated as having committed, that act.

Awards.

48. (1) Where the Tribunal finds that a complaint under this Ordinance is well-founded, it shall make either or both of —

- (a) an award of compensation —
 - (i) which is recoverable as a judgment debt by the complainant from the respondent, and
 - (ii) which carries interest at the rate for the time being prescribed under the Judgements (Interest) (Bailiwick of Guernsey) Law, 1985 from the date of the award until the award is satisfied, and the interest may be recovered by the complainant as part of the award, and
- (b) a non-financial award.

(2) In this section "**non-financial award**" means an order that the respondent take, within a specified period, action appearing to the Tribunal to be practicable for the purposes of obviating or reducing the adverse effect on the complainant of any act to which the complaint relates, where the Tribunal considers the action not to be a disproportionate burden on the respondent.

Amount of compensation– work.

49. (1) Subject to the provisions of subsection (3) and section 52, the amount of an award of compensation under section 48(1)(a) for a contravention of section 14, 19, 20, 21, 22, 23, 24, 25 or 26 is a sum equal to –

- (a) six months' pay, or where the complainant is paid on a weekly basis, one week's pay multiplied by 26, and
- (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.

(2) For the purposes of subsection (1)(a), the amount of a month's pay, or (as the case may be) a week's pay is, subject to the provisions of subsection (3), an amount equal to the complainant's average monthly pay during the six month period immediately preceding the relevant date or (where the complainant was paid on a weekly basis) the complainant's average weekly pay during the 26 week period immediately preceding that date.

(3) In a case where, in the opinion of the Tribunal, the basis set out in subsection (1)(a), as read with subsection (2), for calculating the element of the award based on pay is inappropriate because it results in that element of the award being more or less than the complainant's usual amount of pay over six months, the

award shall be calculated on such other basis as the Tribunal considers to be just and equitable in the circumstances of the case.

- (4) For the purposes of subsection (2), the relevant date is —
- (a) the date of the act which founded the complaint in respect of which the award is made, or
 - (b) where the act is one extending over a period of time, the latest date within that period which is prior to the date on which the complaint was presented to the Secretary.

Amount of compensation – other cases.

50. Subject to section 52, the amount of award of compensation under section 48(1)(a) for a contravention of section 27, 28, 29 or 30 is a sum equal to —

- (a) the amount of any financial loss suffered by the complainant as a result of the act complained of up to a maximum of £10,000, and
- (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.

Amount of compensation – equal pay.

51. (1) Subject to section 52 and subsection (2), the award of compensation under section 48 for a contravention of section 16 is a sum equal to arrears of pay, calculated as the sum which would have the effect of putting the complainant in all respects in the position in which the complainant would have been

had an equal pay clause under section 16 been given effect to by the complainant's employer since the commencement of that section.

(2) The maximum time period during which a sum equal to arrears of pay can be calculated under subsection (1) is six years from the commencement of section 16.

Reduction of award in certain cases.

52. Where in relation to a complaint under this Ordinance the Tribunal finds that the complainant has unreasonably refused an offer by the respondent which, if accepted, would have had the effect of putting the complainant in all respects in the position in which the complainant would have been had the act which founded the complaint not occurred, the Tribunal shall reduce the amount of the award to such extent as it considers just and equitable having regard to that finding.

Appeals from Tribunal to Royal Court.

53. (1) A person aggrieved by a decision or award of the Tribunal on a question of law may, subject to the provisions of subsections (2) and (3), appeal to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) No decision or award of the Tribunal shall be invalidated solely by reason of a procedural irregularity, unless the irregularity was such as to prevent any party to the proceedings from presenting a case fairly before the Tribunal.

(3) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 54.

Reference of points of law to Royal Court.

54. A question of law arising in connection with the hearing and determination by the Tribunal of a complaint under this Ordinance may, if the

Tribunal thinks fit, be referred for decision to the Royal Court in such manner, and within such period as may be prescribed by order of the Royal Court.

Appeals from Royal Court to Court of Appeal.

55. (1) An appeal from a decision of the Royal Court made on an appeal under section 53 or on a reference under section 54 lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Tribunal may join employment complaints.

56. (1) In any case where a person —
- (a) has made a complaint to the Tribunal against a respondent under section 41, and
 - (b) has also made a complaint to the Tribunal against that respondent as employer under either or both of the following provisions —
 - (i) section 16(1)(a), (b) or (c) of the Employment Protection (Guernsey) Law, 1998^g,

^g Ordres en Conseil Vol. XXXVIII, p. 239; amended by Order in Council No. XVIII of 2001; No. VIII of 2002; No. I of 2006; No. I of 2010; Ordinance No. XXXIII of 2003; No. XXXI of 2005; No. III of 2016; and No. IX of 2016.

- (ii) section 38(1)(a) or (b) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005^h,

the Tribunal may, if it thinks it desirable to do so, decide that it shall hear and determine any two or, as the case may be, all three, complaints at the same time.

(2) Where the Tribunal decides to join complaints under subsection (1), the provisions of –

- (a) the Employment Protection (Guernsey) Law, 1998 apply in relation to any complaint under that Law, and
- (b) the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 apply in relation to any complaint under that Ordinance,

in all respects, save where the an award under this Ordinance is to be made under section 48(1)(a) the maximum award that can be made to a person in respect of complaints joined under subsection (1), where the joined complaints relate to the same facts or circumstances, is nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and 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.

No restriction on claims against same respondent.

57. For the avoidance of doubt, a person may make more than one complaint under this Ordinance against the same respondent, for example (and

^h Ordinance No. XXXI of 2005; amended by Ordinance No. III of 2006; and No. IX of 2016.

without limitation) where the complaints relate to different protected grounds under Part I, and in that case the Tribunal may decide –

- (a) to hear and determine the complaints at the same time, and
- (b) to apply the limits in section 49-51 to each complaint or otherwise as it considers to be just and equitable in the circumstances of the case.

PART IX

NON-DISCRIMINATION NOTICES

Issue of non-discrimination notices.

58. (1) This section applies to an act which is prohibited by any provision of Part IV, V, VI or VII (and so applies whether or not proceedings have been brought in respect of the act).

(2) If the Director of the Employment and Equal Opportunities Service ("**the Director**") is satisfied that a person ("**A**") is committing, or has committed any such act, the Director may serve on A a notice (a "**non-discrimination notice**") requiring A –

- (a) not to continue committing, or not to commit again (as the case may be) any such act, and
- (b) where compliance with paragraph (a) involves changes in any of A's practices or other arrangements –
 - (i) to inform the Director when A has effected those changes and what those changes are, and

- (ii) to take such steps as may reasonably be required by the notice to inform other concerned persons.

(3) A non-discrimination notice may also require A to provide the Director with such other information or documents as may reasonably be required by the Director in order to verify that the notice has been complied with.

(4) The non-discrimination notice may specify the time by which any information or document is to be provided to the Director, and the form and manner in which they are to be provided, but any time specified must be reasonable in all the circumstances of the case, and in any event not be later than five years after the notice was served.

(5) The Director shall not serve a non-discrimination notice on a person ("A") unless –

- (a) A has been notified that the Director is minded to issue a non-discrimination notice in respect of A, specifying the grounds on which the Director contemplates doing so,

- (b) A has been offered an opportunity of making oral or written representations in the matter within a period of not less than one month specified in the notice, and

- (c) the Director has taken account of any representations so made.

(6) A person ("B") who, in providing any information or document in compliance or purported compliance with a non-discrimination notice –

- (a) makes a statement which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or causes or permits to be produced any information or document which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or recklessly causes or permits to be produced, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(7) A person who wilfully alters, suppresses, conceals or destroys a document required to be produced by a non-discrimination notice is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Discretionary financial penalties.

59. (1) Where the Director is satisfied that a person has, without reasonable excuse, failed to comply with any requirement contained in a non-discrimination notice, the Director may (subject to the provisions of this section, section 60 and section 61) impose on that person a financial penalty in respect of the

failure of such amount of such amount as the Director considers appropriate and proportionate, but not exceeding £10,000.

(2) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Director must take into consideration the following factors —

- (a) whether the failure was brought to the attention of the Director by the person concerned,
- (b) the seriousness of the failure,
- (c) whether or not the failure was inadvertent,
- (d) what efforts, if any, have been made to rectify the failure and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned and to third parties of imposing a penalty, and
- (f) the penalties imposed by the Director under this section in other cases (if any).

(3) Any financial penalty imposed under this section is payable to the States and is recoverable as a civil debt.

(4) Where the Director proposes to impose a financial penalty, the Director must notify in writing the person on whom the penalty is to be imposed of —

- (a) the proposed penalty, and the reasons for the same,

- (b) the date on which it is proposed, subject to sections 60 and 61, to impose the penalty, which must not be less than 21 days after the date of the notice, and
 - (c) that person's right to make written representations to the Director under section 60(1).
- (5) Where the Director imposes a financial penalty the Director must —
- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
 - (b) include in the notice a statement of the right of appeal under section 61.

Representations prior to financial penalty.

60. (1) The person on whom a notice is served under section 59(4) may make written representations to the Director concerning the proposed financial penalty within 14 days of the date of the notice.

- (2) If the person in question exercises their right under subsection (1) the Director —
- (a) must consider their representations, and
 - (b) may decide to —
 - (i) impose the penalty,
 - (ii) impose a penalty in a lesser amount,

- (iii) withdraw the penalty, or
- (iv) postpone the date for imposing the penalty,

but in any event the Director must inform that person of the decision in writing, and the Director's reasons for the same, before the date on which financial penalty is imposed or would otherwise have been imposed.

(3) Without prejudice to section 61(8), and for the avoidance of doubt, where the Director has imposed a financial penalty under section 59 the Director may not seek to recover payment of that penalty until –

- (a) 28 days immediately following the date of the notice of the penalty issued under section 59(5)(a), or
- (b) if an appeal is instituted within that period, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961ⁱ or until the determination of any such appeal instituted within that time.

Appeals against decisions to impose financial penalties.

61. (1) A person aggrieved by a decision of the Director to impose a financial penalty may appeal to the Court against the decision.

ⁱ Ordres en Conseil Vol. XVIII, p. 315; as amended by Order in Council No. III of 2012; and Recueil d'Ordonnances Tome XXIX, p. 406.

- (2) The grounds of an appeal under this section are that —
- (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (3) Subject to subsection (4), an appeal under this section shall be instituted —
- (a) within a period of two months immediately following the date of the notice of the decision, and
 - (b) by summons served on the Director stating the grounds and material facts on which the appellant relies.
- (4) The period within which an appeal in respect of a decision of the Director to issue a notice of a financial penalty under section 59(5) shall be instituted is 28 days immediately following the date of the notice of the decision.
- (5) The Director may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may —

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^j.

(6) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(7) On an appeal under this section the Court may —

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(8) On an appeal under this section against a decision of the Director, the Court may, on the application of the appellant or the Director or of its own volition, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(9) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

^j O.R.C. No. IV of 2007; as amended by O.R.C. No. II of 2008.

(10) In this section and section 62, "**the Court**" means the Royal Court sitting as an Ordinary Court.

Register of non-discrimination notices.

62. (1) The Director shall establish and maintain a register of non-discrimination notices ("**the register**").

(2) Any person is entitled, on payment of such fee (if any) as may be determined by the Director —

- (a) to inspect the register at the principal offices of the Director during office hours, and to take copies of any entry, or
- (b) to obtain from the Director a copy, certified by the Director to be correct, of any entry in the register.

(3) The Director may, if the Director thinks fit —

- (a) determine that the right to inspect the register and take copies of any entry conferred by subsection (2)(a) is exercisable in relation to a copy of the register instead of, or in addition to, the original,
- (b) keep the register in electronic form.

(4) A non-discrimination notice shall not be included in the register until the time fixed by section 64 for appealing against the notice has expired or (where an appeal is instituted) until the appeal is finally disposed of.

Power to obtain information.

63. (1) Where the Director believes that a person –
- (a) may be committing or may have committed an act which is prohibited by any provision of Part IV, V, VI or VII,
 - (b) may be failing or may have failed to comply with any requirement contained in a non-discrimination notice,

the Director may serve a notice (an "**information notice**") under this section.

- (2) A notice under this section shall be in writing and may –
- (a) require any person to provide such information or documents as may be described in the notice,
 - (b) specify the time by which, and the manner in form in which, the information documents are to be provided, and
 - (c) require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in possession or under the person's control relating to, any matter specified in the notice.

(3) A notice under this section must not require a person to give any information or to produce any evidence which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Royal Court.

- (4) A person who —
- (a) without reasonable excuse fails to comply with any provision of the notice served on him under this section, or
 - (b) wilfully alters, suppresses, conceals or destroys a document required to be produced by notice under this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) A person who, in providing any information or document in compliance or purported compliance with a notice under this section —

- (a) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces, or causes to be produced, any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces, or recklessly causes or permits to be produced, dishonestly or otherwise, any

information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Appeals against notices.

64. (1) Within a period of one month beginning on the day on which a non-discrimination notice or an information notice is served on any person, the person may appeal against any requirement of the non-discrimination or information notice, as the case may be, to the Tribunal.

(2) A person wishing to appeal under this section shall give notice of appeal to the Secretary, who shall immediately transmit the notice to the Convener of the Panel to enable the Convener (or, if the Convener is unavailable, the Deputy Convener) to appoint from the membership of the Panel a Tribunal constituted by three members to hear and determine the appeal.

(3) Where the Tribunal considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Tribunal shall quash the requirement.

(4) On quashing a requirement under subsection (3), the Tribunal may direct that the non-discrimination or information notice shall be treated as if, in place of the requirement quashed, it contained a requirement in the terms specified in the direction; and subsection (1) does not apply to a requirement treated as included in a non-discrimination or information notice by virtue of a direction under this subsection.

(5) A person aggrieved on a question of law by a decision of the Tribunal under this section, may appeal to the Court in such manner and within such period as may be prescribed by order of the Court, but this subsection does not confer a right of appeal on a question of law which has been referred to the Court under subsection (6).

(6) A question of law arising in connection with the hearing and determination by the Tribunal of an appeal against a non-discrimination or information notice may, if the Tribunal thinks fit, be referred for decision to the Court in such manner and within such period as may be prescribed by order of the Court.

(7) No requirement of a non-discrimination notice, requirement of an information notice, or decision of the Tribunal shall be quashed solely by reason of a procedural irregularity (whether on the part of the Director or the Tribunal), unless the irregularity was such as to prevent the person on whom the notice was served ("A") from presenting A's case fairly.

(8) An appeal from a decision of the Court made on an appeal or reference under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal.

(9) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(10) Where under this section the Tribunal or (if there is an appeal from the Tribunal's decision) the Court or Court of Appeal quashes a non-discrimination notice, an information notice, or any requirement of either, the notice or (as the case may be) the requirement shall be deemed void ab initio.

PART X
MISCELLANEOUS AND FINAL

Codes of practice.

65. The Committee may by regulation provide for codes of practice on the prevention of discrimination, or the promotion of equality, under this Ordinance, and regulations may, without limitation —

- (a) provide information and guidance for people on their rights or duties under this Ordinance, and
- (b) provide information about what is required in an accessibility action plan as required by section 36, or otherwise specify established standards of accessibility which would fulfil the duty imposed by that section.

Liability of employers and agents, etc.

66. (1) Anything done by a person ("A") in the course of A's employment shall be treated for the purposes of this Ordinance as done by A's employer as well as by A, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person ("B") as agent for a principal with the authority of that principal shall be treated for the purposes of this Ordinance as done by that principal as well as by B.

(3) In any proceedings (whether before the Tribunal or the court) brought under this Ordinance against any person ("C") in respect of an act alleged to have been done by an employee of C's it is a defence for C to prove that C took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of the employee's employment, acts of that description.

(4) An employee or agent ("D") does not contravene this Ordinance if —

- (a) D is following the instructions or policy of the employer or principal, as the case may be, and
- (b) it is reasonable for D to do so.

Restrictions on contracting out.

67. (1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports —

- (a) to exclude or limit the operation of any provision of this Ordinance, or
- (b) to preclude a person from bringing proceedings under this Ordinance before the Tribunal.

(2) Subsection (1) does not apply to —

- (a) a settlement agreement, including one made with the assistance of the Employment and Equal Opportunities Service pursuant to section 46, or
- (b) a compromise agreement.

Amendment of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

68. (1) The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 is amended as follows.

(2) In section 46 —

(a) for subsection (1), substitute —

"(1) Subject to the provisions of subsection (3) and section 47, the amount of an award of compensation under section 45, is a sum equal to —

(a) six month's pay, or where the complainant is paid on a weekly basis, one week's pay multiplied by 26, and

(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."

(b) In subsection (2) —

(i) for "subsection (1)" substitute "subsection (1)(a)",

(ii) for "three" substitute "six", and

(iii) for "13" substitute "26".

(c) For subsection (3), substitute —

"(3) In a case where, in the opinion of the Tribunal, the basis set out in subsection 1(a) as read with subsection (2), for calculating the element of the award based on pay is inappropriate because it results in that element of the award being more or less than the complainant's usual amount of pay

over six months, the award shall be calculated on such other basis as the Tribunal considers to be just an equitable in the circumstances of the case."

(3) After section 37, insert —

"Pre-complaint conciliation."

37A. (1) If a person ("A") considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed, at any time prior to A making a complaint under this Ordinance, A and B may agree to engage in pre-complaint conciliation by making a request of the Committee, and if they do so agree, section 39(1A) will apply in relation to the time period for bringing a complaint.

(2) In this section, "**pre-complaint conciliation**" means a voluntary process in which the Committee uses its best endeavours to settle the potential complaint by giving such advice and assistance as it considers necessary or expedient or by conciliation, which ends when either —

- (a) a settlement has been reached, or
- (b) either A or B notifies the other that they no longer wish to participate in pre-complaint conciliation."

(4) In section 39 —

- (a) in paragraph (1)(a), immediately before the words "within a period of three months", insert "subject to subsection (1A)",
- (b) After subsection (1), insert —

"(1A) The three month period specified in subsection (1)(a) is extended by any period in which the parties are engaged in pre-complaint conciliation."

Awards to be recoverable as preferred debts.

69. For the purposes of section 1 of the Preferred Debts (Guernsey) Law, 1983^k (the "**Preferred Debts Law**"), in the distribution of the property of a person whose affairs have been declared to be in a state of *désastre* at a meeting of arresting creditors held before a Jurat as Commissioner, and in the winding up of a company which is insolvent —

- (a) an award of compensation under section 45 of this Ordinance ranks equally with —
 - (i) the debts to which section 1(1)(b) of the Preferred Debts Law relates,
 - (ii) an award under section 45 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, and
 - (iii) any award under section 15K, 21 or 24 of the Employment Protection (Guernsey) Law, 1998,

and shall be paid in full, unless the assets are insufficient, in which case the award of compensation under section 45 of this Ordinance and the debts and

^k Ordres en Conseil Vol. XXVIII, p. 184; amended by No. VII of 1992; Vol. XXXIV, p. 299; No. IX of 1998; No. XIV of 2008; Ordinance No. XXXI of 2005; and No. XXIII of 2006.

award described in subparagraphs (i), (ii) and (iii) shall abate in equal proportions, and

- (b) subject to the provisions of paragraph (a), and award of compensation under section 45 of this Ordinance is payable in priority to all debts other than debts to which section 1(1)(a) of the Preferred Debts Law relates.

Proof of documents.

70. In any legal proceedings (including, without limitation, proceedings under this Ordinance, whether before the Tribunal or otherwise) a document purporting to be a document issued for the purposes of this Ordinance by or on behalf of the Employment and Equal Opportunities Service or the Committee and to be signed by an officer, member or statutory official thereof —

- (a) is admissible in evidence,
- (b) shall, unless the contrary is proved, be deemed to be the document which it purports to be and to have been signed by the person by whom it purports to have been signed, without proof of person's identity, signature or official capacity, and
- (c) is evidence of the matters stated therein.

Interpretation.

71. In this Ordinance, except where the context otherwise requires —

"accessibility action plan": see section 36,

"**accommodation provider**": see section 30,

"**ancient monument**": see section 36,

"**arrangements for selective admission**": see paragraph 23 of the Schedule,

"**assessed needs**": see paragraph 26 of the Schedule,

"**blood**": see paragraph 28 of the Schedule,

"**blood donation service**": see paragraph 28 of the Schedule,

"**caching services**": see paragraph 37 of the Schedule,

"**charitable instrument**": see paragraph 10 of the Schedule,

"**charity**": see paragraph 10 of the Schedule,

"**child**" includes step-child,

"**close relative**": see section 3,

"**club or association**": see section 29,

"**colleague**": see section 18,

"**commercial premises**": see section 35,

"**Committee**" means the States Committee for Employment & Social Security,

"**compromise agreement**": see section 44,

"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,

"contract work": see section 19,

"contract worker": see section 19,

"country": see paragraph 3 of the Schedule,

"the Director" means the Director of the Employment and Equal Opportunities Service appointed under [],

"diversity monitoring": see section 15,

"education provider": see section 28,

"educational institution": see section 28,

"employee": see section 14,

"employer": see section 14,

"employment": see section 14,

"employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purposes of finding employment for persons, or of supplying employers with persons to do work,

"Employment and Equal Opportunities Service" means the service which is headed by the Director of the Employment and Equal Opportunities Service,

"enactment": see paragraphs 2 and 5 of the Schedule,

"estate agent": see paragraph 42 of the Schedule,

"facilities": see section 27,

"Guernsey" includes Herm and Jethou and the territorial waters adjacent to Guernsey, Herm and Jethou,

"hosting services": see paragraph 37 of the Schedule,

"Immigration Acts": see paragraph 5 of the Schedule,

"impairment": see section 1,

"independent adviser": see section 44,

"information society service": see paragraph 37 of the Schedule,

"judge": see paragraph 2 of the Schedule,

"landlord" means an accommodation provider who has disposed of property by way of a tenancy to a tenant,

"lawyer": see section 44,

"minor improvement": see section 33,

"**national origins**": see section 2,

"**non-financial award**": see section 48,

"**the Panel**": see section 41,

"**parent**" includes step-parent,

"**partner**" includes civil partner,

"**partnership**": see section 22,

"**pre-complaint conciliation**": see section 40,

"**prescribed list of works**": see section 34,

"**prescribed organisation**": see paragraph 14 of the Schedule,

"**preventative public health services**": see paragraph 32 of the
Schedule,

"**principal**", in relation to contract work: see section 19,

"**a professional body**": see section 26,

"**public body**": see paragraph 7 of the Schedule,

"**public highway**": see section 37,

"**public office**": see section 24,

"**public sector school or education provider**": see section 36,

"public sector service provider": see section 36,

"qualification or authorisation": see section 26,

"recipient", in relation to information society services: see paragraph 32 of the Schedule,

"recruitment process": see section 15,

"registered health professional": see paragraph 30 of the Schedule,

"relevant financial service": see paragraphs 34 of the Schedule,

"religious mutual association": see paragraph 35 of the Schedule,

"religious organisation": see paragraph 12 of the Schedule,

"religious premises": see paragraph 39 of the Schedule,

"residential premises": see paragraph 42 of the Schedule,

"responsible body", in relation to a school: see section 28,

"risk assessment based relevant financial service": see paragraphs 33 of the Schedule,

"school": see section 28,

"service provider": see section 27,

"services of a mere conduit": see paragraph 37 of the Schedule,

"settlement agreement": see section 44,

"**sibling**" includes step-sibling,

"**social housing provider**": see paragraph 44 of the Schedule,

"**sport**": see paragraph 41 of the Schedule,

"**States**" means the States of Guernsey,

"**substantial**", in relation to disadvantage: see section 31,

"**supported employment**": see paragraph 21 of the Schedule,

"**tenancy**" means a tenancy created (whether before or after the coming into force of this Ordinance) —

- (a) by a lease or sub-lease,
- (b) by an agreement for a lease or sub-lease, or
- (c) by a tenancy agreement,

and "**tenant**" shall be construed accordingly.

"**the Tribunal**": see section 43,

"**vocational training**": see section 21.

Exceptions to the prohibitions in Parts IV to VII.

72. The Schedule (Exceptions to the prohibitions in Parts IV to VII) has effect.

General provisions as to subordinate legislation.

73. (1) Regulations or an order under this Ordinance —
- (a) may be amended or repealed by subsequent regulations, or an order as the case may be, hereunder,
 - (b) may contain such consequential incidental supplemental and transitional provision (including provision for the payment of fees) as may appear to the Committee, or (as the case may be) to the Royal Court, to be necessary or expedient, and
 - (c) subject to subsection (2), in the case of regulations of the Committee, shall be laid before a meeting of the States as soon as possible and shall if at that or the next meeting the States resolved to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.
- (2) Any regulations made under paragraph 46 of the Schedule shall not have effect unless and until approved by a resolution of the States.
- (3) Any power conferred by this Ordinance to make an order or regulations may be exercised —
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised —
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any conditions prescribed in the regulations.

Transitional provisions: contracts etc.

74. Where a —

- (a) contract (other than a contract of employment),
- (b) lease, or
- (c) licence to occupy property,

has been entered into before the commencement of this Ordinance, ("**Commencement**") and continues to have effect thereafter, no complaint may be made to the Tribunal under this Ordinance in respect of an act done to give effect to, or otherwise in accordance with, any provision of that contract, lease or licence until the expiry of two years from Commencement, and for the purposes of this section

"**contract**" includes, but is not limited to, a contract for a financial services product such as a policy of insurance or a pension scheme.

Citation.

75. This Ordinance may be cited as the Prevention of Discrimination (Guernsey) Ordinance, 2022.

Commencement.

76. This Ordinance shall come into force on the day appointed by Regulations of the Committee; and different dates may be appointed for different provisions and for different purposes.

DRAFT

SCHEDULE

Section 72

PART I

GENERAL EXCEPTIONS TO THE PROHIBITIONS IMPOSED BY PARTS IV TO VII

Positive action.

1. This Ordinance does not prohibit a person ("P") from taking any action which —

(a) P takes with the aim of ensuring equality, or a greater degree of equality, on any of the protected grounds, and

(b) which P makes with the aim of achieving one of the following —

(i) the prevention, compensation for or removal of any disadvantage or inequality connected with a protected ground,

(ii) the promotion of equality of opportunity on any of the protected grounds, including in relation to recruitment and promotion, or

(iii) the catering for the special needs of persons, or a category of persons, who, because of a protected ground, may require facilities, arrangements, services or assistance not

required by persons who do not have those special needs.

Act done under legislative or judicial authority.

2. (1) This Ordinance does not prohibit a person from taking any action which is required by or under, or done for the purpose of complying with —

- (a) an enactment,
- (b) a requirement or condition imposed under an enactment, or
- (c) an order of a court or tribunal.

(2) This Ordinance does not apply to —

- (a) anything done in the exercise of a judicial function, including things done on the instructions of, or on behalf, of a judge, or
- (b) a decision whether or not to commence or continue criminal proceedings.

(c) In this Ordinance "**judge**" means a magistrate or a judge of the Royal Court, the Court of Appeal or the Judicial Committee of the Privy Council.

(3) In this section, "**enactment**" includes —

- (a) an enactment of the United Kingdom having effect in Guernsey, and

- (b) any convention which is extended to or which otherwise has effect in Guernsey.

Compliance with law of another country.

3. (1) This Ordinance does not prohibit a person from taking any action which is done in Guernsey for the purposes of complying with the law of, or the order of a court or tribunal of, another country.

- (2) In this section, "**country**" includes territory or jurisdiction.

National security.

4. A person does not contravene this Ordinance only by doing, for the purposes of safeguarding national security, anything it is proportionate to do for that purpose.

Immigration.

5. (1) This paragraph applies to discrimination on the protected grounds of race and religious belief.

(2) This Ordinance does not prohibit a relevant person from taking any action which is done in the exercise of functions exercisable under, in connection with or for the purposes of any —

- (a) enactment which relates to immigration, including but not limited to —

- (i) the Immigration Acts,
- (ii) the Immigration (Bailiwick of Guernsey) Rules, 2008,

- (iii) the Directions of the Lieutenant Governor Concerning Leave to Enter and Remain, 2019,
or
 - (b) policy of the States of Guernsey or the Committee for Home Affairs which relates to immigration.
- (3) In this section—
 - (a) "**enactment**" includes an enactment of the United Kingdom having effect in Guernsey, and
 - (b) "**relevant person**" includes, without limitation, the Committee for Home Affairs, the Lieutenant Governor, an immigration officer, a police officer and any person granting or refusing entry clearance within the meaning of the Immigration Act 1971 (c 77) as extended to the Bailiwick,
 - (c) "**Immigration Acts**" means any Act of the United Kingdom Parliament extended (with modifications, if any) to the Bailiwick and relating to immigration, including but not limited to the following —
 - (i) the Immigration Act 1971 (c 77),
 - (ii) the Immigration Act 1988 (c 14),
 - (iii) the Asylum and Immigration Act 1996 (c 49),
 - (iv) the Immigration and Asylum Act 1999 (c 33),

- (v) the Nationality, Immigration and Asylum Act 2002 (c 41),
- (vi) the Immigration, Asylum and Nationality Act 2006 (c 13),
- (vii) the UK Borders Act 2007 (c 30),
- (viii) the Immigration Act 2014 (c 22), and
- (ix) the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c 20).

Population Management.

6. (1) This paragraph applies to discrimination on the protected grounds of race and carer status.

(2) This Ordinance does not prohibit a relevant person from taking any action which is done with the aim of giving effect to or in the exercise of functions exercisable under, in connection with or for the purposes of –

- (a) the Population Management (Guernsey) Law, 2016, or
- (b) any policy of the States of Guernsey or the Committee for Home Affairs which relates to population management,

provided that the action taken is a proportionate means of achieving that aim.

(3) In this section "**relevant person**" means a person who has functions related to population management conferred on them by the Population Management (Guernsey) Law, 2016 or another enactment, or by a policy mentioned

in paragraph (2)(b) and includes, without limitation, the Administrator of Population Management.

Crown employment, etc.

7. (1) A person does not contravene this Ordinance by making, implementing, following, publishing or displaying rules or requirements restricting to persons of particular nationality, descent, residence, or birthplace —

- (a) employment in the service of the Crown,
- (b) employment by a public body, or
- (c) holding a public office.

(2) In this section —

- (a) "**public body**" means a body (whether corporate or unincorporated) certain of whose functions are functions of a public nature, and
- (b) "**public office**" has the same meaning as in section 24 save that it includes the office of People's Deputy.

Tendencies to commit criminal offences.

8. For the purposes of this Ordinance, no tendency to commit an act the commission of which is or may be a criminal offence punishable with imprisonment is protected under any of the protected grounds, including, but not limited to —

- (a) a tendency to set fires,
- (b) a tendency to steal,

- (c) a tendency to physically or sexually abuse other persons,
- (d) a tendency towards indecent exposure or voyeurism, or
- (e) a tendency to view child pornography.

Race: act done pursuant to States' policy.

9. (1) This paragraph applies to discrimination on the protected ground of race.

(2) This Ordinance does not prohibit a person from taking any action which is done pursuant to a policy adopted by the States or any Committee thereof where the implementation of that policy applies criteria based on a person's place of birth or length of residence in Guernsey for the purposes of providing access to —

- (a) government services (including, without limitation, loans, grants and benefits), and
- (b) employment or other opportunities.

Charities.

10. (1) A person does not contravene this Ordinance only by restricting the provision of benefits to persons who share a protected ground if —

- (a) the person acts in pursuance of a charitable instrument, and

- (b) the provision of benefits is either a proportionate means of achieving a legitimate aim, or for the purpose of preventing or compensating for a disadvantage linked to the protected ground.

(2) If a charitable instrument enables the provision of benefits to persons of a class defined by reference to colour, it has effect for all purposes as if it enabled the provision of such benefits —

- (a) to persons of the class which results if the reference to colour is ignored, or
- (b) if the original class is defined by reference only to colour, to persons generally.

(3) In this section —

- (a) "**charitable instrument**" means an instrument establishing or governing a charity (including an instrument made or having effect before the commencement of this section), and
- (b) "**charity**" means any organisation established for charitable purposes only.

Acts of worship.

11. This Ordinance, so far as relating to the protected ground of religious belief, does not apply in relation to anything done in connection with acts of worship or other religious observance.

Religious organisations.

12. (1) To the extent that a religious organisation falls within Parts V or VI of this Ordinance, the religious organisation does not contravene those Parts only by applying in relation to membership of or registration with the organisation, or appointment to a board or committee of the organisation a requirement to be of a particular religion.

(2) In this section, "**religious organisation**" means any organisation with an ethos based on religion.

Tribunal members.

13. This Ordinance does not prohibit a member of the Tribunal from taking any action which is done in the exercise of functions exercisable under, in connection with, or for the purposes of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.

Animals.

14. (1) A person does not contravene this Ordinance only by disallowing or putting restrictions on an animal, unless the animal meets the criteria in paragraph (2).

(2) The criteria is that the animal is a dog that has been trained by a prescribed organisation to —

- (a) guide a blind person,
- (b) assist a deaf person,
- (c) assist a person with epilepsy or diabetes,

- (d) assist a disabled person who has a disability that affects the person's mobility, manual dexterity, physical co-ordination or ability to move everyday objects, or
- (e) assist a person who has a disability (other than one falling within paragraphs (a) to (d)) of a kind as set out in regulations of the Committee.

(3) In this paragraph, a "**prescribed organisation**" is an organisation which trains dogs which has been prescribed for the purposes of this paragraph by regulations of the Committee.

PART II

SPECIFIC EXCEPTIONS - WORK

Genuine and determining occupational requirement.

15. (1) An employer ("A") does not contravene a provision mentioned in Part V by applying in relation to work for them, a requirement for a person to have a particular protected ground, if A shows that, having regard to the nature or context of the work —

- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

(2) The reference in paragraph (1) to work is a reference to employment, contract work, a position as partner, an appointment to a personal office or an appointment to a public office.

(3) Where an employer can show that their requirement for a person to have a particular protected ground is an occupational requirement falling within subsection (1), an employment agency or provider of vocational training does not contravene any provision of this Ordinance by restricting their supply of persons to A to those that have the particular protected ground.

Employment for the purposes of an organised religion.

16. (1) An employer ("A") does not contravene section 14(1) or (2) in relation to work for A which is for the purposes of an organised religion by —

- (a) applying a requirement to be of a particular religion, or
- (b) having regard to any conduct on the employee's part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination in question.

(2) In this section, work is for the purposes of an organised religion if it involves representing or promoting the religion, including, but not limited to being a minister, celebrant, leader or youth worker of the religion.

Senior leadership positions: schools with a religious ethos.

17. (1) Section 14(1) and (2), so far as relating to religious belief, does not apply to a school which has a religious ethos, but only to the extent that —

- (a) preference may be given, in connection with the appointment, promotion or remuneration of any

teacher in a senior leadership position at the school, to persons —

- (i) whose religious opinions are in accordance with the tenets of the religion or the religious denomination of the school,
- (ii) who attend religious worship in accordance with those tenets, or
- (iii) who give, or are willing to give, religious education at the school in accordance with those tenets, and

(b) regard may be had, in connection with the termination of the employment of any teacher in a senior leadership position at the school, to any conduct on the teacher's part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination of the school.

(2) In this section a "**senior leadership position**" means the position of head teacher, deputy head teacher, assistant head teacher or head of religious education in a school.

Safeguarding (employment).

18. For the avoidance of doubt, no provision in this Ordinance shall be construed as requiring an employer ("A") to recruit, retain in employment or promote, as the case may be, a person ("B") —

- (a) who is an employee of A's, or

- (b) who has applied to A for employment or work experience,

in circumstances where A believes reasonably that B has committed, or has a tendency to commit, an act the commission of which is or may be a criminal offence punishable with imprisonment, including but not limited to acts of physical or sexual abuse of other persons and the act of viewing child pornography.

Employees and family situations.

19. For the avoidance of doubt, an employer ("A") does not contravene any provision of this Ordinance by —

- (a) granting an employee's request for flexible working, provided the right to request a flexible working arrangement is available to all A's employees,
- (b) providing benefits for employees with care responsibilities for family members, including but not limited to parents of a child and those with the protected ground of carer status, and
- (c) providing benefits to employees for family situations, including but not limited to paid leave in the case of the illness of a family member.

Qualifications.

20. (1) This section applies to discrimination on the protected ground of race.

(2) An employer ("A") does not discriminate against an applicant for employment or an employee ("B"), as the case may be, by requiring B to hold a

certain qualification in relation to a role which B holds or is applying for, in circumstances where A requires, or would require, the qualification of persons with whom B does not share a racial group.

(3) A provider of vocational training ("C") does not discriminate against an applicant for vocational training, or a person who is undertaking training ("D"), as the case may be, by requiring D to hold a certain qualification in relation to training which D is undertaking or is applying for, in circumstances where C requires, or would require, the qualification of persons with whom D does not share a racial group.

Employment of people with a particular disability.

21. (1) It is not a contravention of this Ordinance for a person who provides supported employment to treat persons who have the same disability, or a disability of a description as prescribed by regulations of the Committee, more favourably than those who do not have that disability or a disability of such a description in providing such employment.

(2) In this section, "**supported employment**" means [], and

No requirement to employ person who cannot fulfil essential functions of post.

22. (1) For the avoidance of doubt, nothing in this Ordinance requires an employer ("A"), in relation to a person ("B"), to —

- (a) offer employment to B,
- (b) promote B or retain B in employment, or
- (c) offer training or any other benefit associated with employment to B,

in circumstances where B cannot fulfil one or more of the essential functions of the post.

(2) Also for the avoidance of doubt, where B is a disabled person, B can fulfil the essential functions of the post if they are or would be able to do so after A has fulfilled any duty A has to B under section 31 (reasonable adjustments).

PART III

SPECIFIC EXCEPTIONS – EDUCATION

Disability: admission to schools.

23. (1) A person does not contravene section 28(1) or (2) so far as relating to the protected ground of disability, only by applying arrangements for selective admission to a school.

(2) In this section, "**arrangements for selective admission**" mean arrangements which provide for some or all of a school's pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

Religious belief: admission to schools.

24. Section 28(1), so far as relating to religious belief, does not apply to a school with a religious ethos.

Curricula.

25. (1) For the avoidance of doubt, an education provider or school does not contravene section 28(1) or (2) only by developing, accrediting, setting or teaching curricula which does not represent people of a particular protected ground.

(2) In relation to the protected ground of religious belief, a school with a religious ethos does not contravene section 28(1) or (2) only by teaching curricula which focuses primarily on the religion of the school, provided that the curriculum also teaches that others religions exist and are deserving of respect.

Pupils with assessed needs.

26. (1) A person does not contravene section 28(1) or (2) only by applying arrangements which provide for a pupil to receive additional or alternative educational services, where this is done in order to meet the assessed needs of that pupil.

(2) In this section, "**assessed needs**" means the alternative or additional needs of a pupil which have been assessed by, or on behalf of, the responsible body of a school or education provider.

PART IV

SPECIFIC EXCEPTIONS – HEALTH

Infectious diseases.

27. A person ("A") does not contravene this Ordinance if they discriminate against another person ("B") on the ground of B's disability if –

- (a) B's disability is an infectious disease, or
- (b) an assistance animal belonging to B has an infectious disease, and
- (c) the discrimination is necessary to protect public health.

Blood donation services.

28. (1) A person operating a blood donation service does not contravene section 27 only by refusing to accept a donation of an individual's blood if —

(a) the refusal is because of an assessment of the risk to the public, or to the individual, based on clinical, epidemiological or other data obtained from a source on which it is reasonable to rely, and

(b) the refusal is reasonable.

(2) In this section —

(a) a "**blood donation service**" is a service for the collection and distribution of human blood for the purposes of medical services, and

(b) "**blood**" includes blood components.

Care within the family.

29. (1) A person ("A") does not contravene sections 27 or 30 only by participating in arrangements under which (whether or not for remuneration) A takes into A's home, and treats as a member of A's family, a person requiring particular care and attention.

(2) For the avoidance of doubt, for the purposes of subsection (1) it does not matter whether A has the protected ground of carer status or not.

Clinical judgement.

30. (1) A registered health professional ("A") does not contravene section 27 only by treating a person ("B") differently solely in the exercise of a clinical judgement in connection with the diagnosis of illness of B's or medical treatment of B.

(2) In this section "**registered health professional**" means —

- (a) a person entitled to practise as a medical practitioner within the meaning of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, or
- (b) a nurse, midwife or health visitor —
 - (i) registered with the UK's Nursing and Midwifery Council or
 - (ii) registered under any enactment in force in Guernsey concerning the required standards, qualifications or registrations required to practise as a nurse, midwife or health visitor.

Persons who lack capacity.

31. A person ("A") does not contravene this Ordinance only by treating a person ("B") differently where —

- (a) B lacks capacity in relation to a matter within the meaning of the Capacity (Bailiwick of Guernsey) Law, 2020, and

- (b) for that reason, the treatment of B is reasonable in the particular case.

Preventative health services.

32. (1) A person does not contravene section 27, in relation to any of the protected grounds, only by offering or providing a preventative public health service, where the service is offered or provided to the individual based on clinical, epidemiological or other relevant data obtained from a source on which it is reasonable to rely.

(2) In this section "**preventative public health services**" means any public health service aimed at preventing ill health or promoting good health and includes, but is not limited to —

- (a) programmes which screen individuals for disease,
- (b) immunisation programmes,
- (c) mental health services,
- (d) services for diabetics such as retinopathy and chiropody,
- (e) sexual health services including the provision of free contraception.

PART V

SPECIFIC EXCEPTIONS – GOODS AND SERVICES

Financial services involving an assessment of risk.

33. (1) A person does not contravene this Ordinance, so far as relating to discrimination on the protected grounds of disability or race, by doing anything in connection with a risk assessment based relevant financial service if the thing is done by reference to information which is both relevant to the actuarial or other assessment of the risk in question and from a source on which it is reasonable to rely.

(2) In this paragraph, "**risk assessment based relevant financial service**" means —

- (a) a policy of insurance,
- (b) a service relating to membership of or benefits under an occupational or personal pension scheme,
- (c) an annuity, or
- (d) any other financial services product where it is necessary or expedient to carry out an assessment of risk, whether actuarial or otherwise, for the purposes of providing the financial services product to a person.

Financial services arranged by an employer and personal pension schemes.

34. (1) This paragraph applies to the protected ground of disability.

(2) In the circumstances set out in subparagraph (3), a person ("A") does not contravene section 27 by making a payment in connection with a relevant financial service where —

- (a) the payment is made to a disabled person ("B") in respect of the disability which B has, and
- (b) A treats B more favourably than another disabled person to whom a payment has been, or is to be, made by A by making the payment.

(3) The circumstances referred to in subparagraph (2) are circumstances where —

- (a) the relevant financial service is provided in pursuance of arrangements made by an employer for the service provider to provide the service to the employer's employees as a consequence of the employment, or
- (b) the relevant financial service is a service relating to membership or benefits under a personal pension scheme not falling with paragraph (a).

(4) For the avoidance of doubt, subparagraph (2) does not apply to making a payment if, in making the payment, A treats a disabled person less favourably than a person who is not disabled.

(5) In this paragraph —

- (a) "**relevant financial service**" means —

- (i) a policy of insurance,
 - (ii) a service relating to membership of or benefits under an occupational or personal pension scheme, or
 - (iii) an annuity, and
- (b) references to the making of a payment include the conferral of a benefit.

Financial services: religious mutual organisations.

35. (1) A religious mutual association does not contravene section 27 or 29, on the ground of religious belief, only by restricting the provision of its services to persons of the particular religion or religious denomination to which the association is affiliated.

(2) In this section, a "**religious mutual association**" means any mutual organisation (where members contribute funds in order to receive member benefits) which is affiliated to a particular religion or religious denomination.

Television, radio and online broadcasting and distribution.

36. (1) Section 29 does not apply the provision of a content service (within the meaning given by section 32(7) of the UK's Communications Act, 2003 as extended to Guernsey by the Communications (Bailiwick of Guernsey) Order 2003).

(2) Sub-paragraph (1) does not apply to the provision of an electronic communications network, electronic communications service or associated facility (each of which has the same meaning as in that Act as extended to Guernsey).

Information society services.

37. (1) An information society service provider does not contravene this Ordinance —

- (a) by providing the services of a mere conduit,
- (b) by providing caching services,
- (c) by providing hosting services.

(2) In this section —

(a) "**information society service**" means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services OR has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations,

(b) "**services of a mere conduit**" means so much of an information society service as consists in the provision of access to a communications network, or the transmission in a communications network of information provided by the recipient of the service, but only where the service provider does not —

- (i) initiate the transmission,
- (ii) select the recipient of the transmission, or
- (iii) select or modify the information contained in the transmission, and

(c) "**recipient**" means a person who (whether for professional purposes or not) uses an information society service, in particular for seeking information or making it accessible.

(3) In this section, "**caching services**" means so much of an information society service as consists of doing anything in connection with the automatic, intermediate and temporary storage of information provided by a recipient of the service, if the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and the service provider —

- (a) does not modify the information,
- (b) complies with such conditions as are attached to having access to the information, and
- (c) where subparagraph 4 applies, expeditiously removes the information or removes access to it.

(4) This subparagraph applies if the information society service provider obtains actual knowledge that —

- (a) the information at the initial source of the transmission has been removed from the network,
- (b) access to it has been disabled, or
- (c) a court or administrative authority has required the removal from the network of, or the disablement of access to, the information.

(5) In this section "**hosting services**" means doing anything in providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if —

- (a) the service provider had no actual knowledge when the information was provided that its provision amounted to a contravention of this Ordinance, or
- (b) on obtaining actual knowledge that the provision of the information amounted to a contravention of that section, the service provider expeditiously removed the information or disabled access to it.

(6) Subsection (1) does not apply to hosting services if the recipient of the service is acting under the authority or control of the service provider.

Dramatic performances.

38. A service provider does not contravene section 27, in relation to the protected grounds of disability or race, by doing anything in relation to a person which is reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.

Goods and services: religious belief.

39. (1) A service provider does not contravene section 27, in relation to the protected ground of religious belief, only by —

- (a) restricting the provision of goods or services which are for the purposes of a particular religious belief, to persons of that religious belief, or
- (b) restricting the use of religious premises by a person on the grounds that allowing the use would not comply with the doctrine of the religious belief.

(2) In this section, "**religious premises**" means any building which is used for religious purposes, including but not limited to use —

- (a) as a place of worship,
- (b) as a place to advance the religious belief, or
- (c) as a place to teach the practice or principles of a religious belief.

PART VI

SPECIFIC EXCEPTIONS – CLUBS AND SPORTS

Clubs – restricted membership.

40. (1) A club or association does not contravene section 29(1) by restricting membership to persons who share a protected ground.

(2) Sub-paragraph (1), so far as relating to race, does not apply in relation to colour.

Sport – disability and nationality.

41. (1) A person does not contravene this Ordinance only by –

- (a) excluding a disabled person from participation in a sport because the person is unable to perform the actions required by the rules of the sport, after (if applicable) a reasonable adjustment has been made in respect of the person, or
- (b) not selecting a disabled person as part of a sports team or to participate in a sporting event where there has been a fair and reasonable selection process for the team or event which provides for participants to be selected by reference to skill or ability.

(2) A person ("A") who does anything in relation to organising a sporting event or providing sporting facilities does not contravene this Ordinance only because of the disability, nationality or national origins of another provided that the thing done by A is a proportionate means of achieving a legitimate aim, for instance because it is done in pursuance of the rules regarding who may represent a country, place or area.

(3) In this section, "**sport**" means a sport, game or other activity of a competitive nature.

PART VII

SPECIFIC EXCEPTIONS – ACCOMMODATION

Private disposals of residential premises.

42. (1) An accommodation provider does not contravene this Ordinance only by making a private disposal of residential premises.

(2) A disposal is a private disposal only if the accommodation provider does not –

- (a) use the services of an estate agent for the purpose of disposing of the premises, or
- (b) publish (or cause to be published) an advertisement in connection with their disposal.

(3) In this paragraph –

(a) "**estate agent**" means a person who, by way of profession or trade, provides services for the purpose of –

- (i) finding premises for persons seeking them, or
- (ii) assisting in the disposal of premises, and

(b) "**residential premises**" means any premises used or usable for the purposes of human habitation.

Accommodation provided in a person's home.

43. (1) This paragraph applies where a premises is the only or main home of a person ("A") or the only or main home of a close relative of A, and A (or A's close relative) resides, and intends to continue to reside, in the premises.

(2) A can do anything in relation to the disposal or occupation of rooms within the premises without contravening this Ordinance provided that —

- (a) the rooms disposed of or occupied do not comprise separate and self-contained accommodation, and
- (b) the premises is not a guest house or a house of multiple occupation.

(3) In this paragraph "**close relative**" has the same meaning as in section 3(3).

Social housing.

44. (1) This paragraph applies to the protective grounds of carer status, disability and race (but, in the case of the protected ground of race, only applies in relation to a person's place of birth or length of residency in Guernsey).

(2) A social housing provider does not contravene this Ordinance by taking any action which is done pursuant to a policy adopted by the social housing provider which allocates housing in accordance with a person's needs.

(3) In this paragraph, "**social housing provider**" means any provider of social housing in Guernsey, including, without limitation, the States and the Guernsey Housing Association LBG.

Specialist accommodation

45. For the avoidance of doubt, a person ("P") does not contravene section 30 of this Ordinance only by providing accommodation which caters for the needs of persons who have a particular protected ground, where P takes this action in the circumstances set out in paragraph 1 of this Schedule.

Power of Committee to amend Schedule.

46. The Committee may be regulation amend this Schedule.

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