

# Open letter to Deputies Blin, de Lisle, and Meerveld.

Dear Deputies Blin, de Lisle, and Meerveld

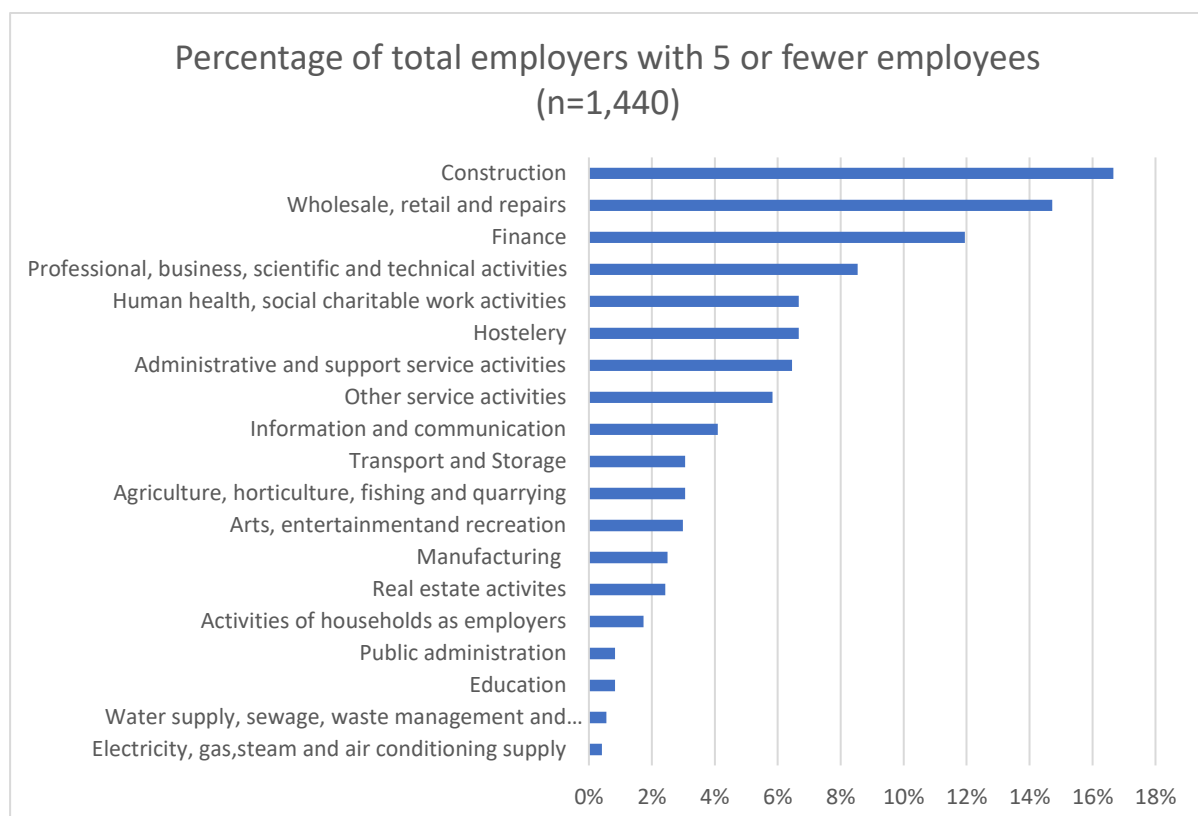
## Amendment 8 of the Prevention of Discrimination Legislation

I ask you to withdraw amendment 8 to the Prevention of Discrimination (Guernsey) Ordinance, 2022. I would ask all Deputies to vote against amendment 8 if you decide not to withdraw it.

This amendment is discriminatory. It will cut through the intention of the Ordinance and is itself discriminatory by taking two grounds, out of the 5 covered in the Ordinance, and treating them less favourably by providing reduced or no protection for the grounds of disability and carer status when a person is a customer or employee of a small business.

## Definition of Small Businesses

Defining small businesses as being employers with 5 or fewer employees covers 65% of businesses with employees (from Table 4.2.1 Employers by economic sector and size at 31st March 2022 [Quarterly Population Employment & Earnings bulletin Q3 2021.indd \(gov.gg\)](#) ). These are the very businesses that customers who are carers or who have impairments want to use. Wholesale, retail and repair form 15% of the 1,440 businesses that would be exempt if this amendment were passed.



The above graph and total of 1,440 does not include any organisation where there are no employees, which covers many charities, sporting groups, professional associations and other not for profit groups. Your intention is not stated as far as organisations who have no employees is concerned, which are not covered by the definition of small businesses in your amendment, as I understand it, as they would not be employers.

### **Assistance to Small Businesses**

The Institute of Directors, Chamber of Commerce, international Business Association, Confederation of Guernsey Industry and the Chartered Institute of Personnel Development released a joint statement about legislation following the release of the Policy Letter in July 2020 ( <https://www.itv.com/news/channel/2020-07-17/historic-anti-discrimination-law-passed-in-guernsey> ).

“The business groups welcome the Assembly’s decision to approve the proposals for the new discrimination ordinance. We hope to work alongside government and other stakeholders throughout the legislative process to ensure a smooth and successful implementation.”

The GDA has reached out to businesses over the last 2 years since that statement. It has met with business groups and presented sessions about the legislation in various business forums. We have never had any feedback to indicate that small businesses wanted to be exempt from the legislation.

We were aware that change is not normally welcome, and it can be onerous to find out about what it would mean to you when you are already busy running your business. After speaking to small businesses changes were made so that the training offered free by the Consortium (see <https://www.consortium.gg/>) would also be online, allowing staff, self-employed people, volunteers to do it at a time to suit them. We also reassured businesses that guidance was being written by Appleby’s and would be available before the commencement of the Ordinance.

Whilst the States decided not to have an Equality and Rights Organisation (ERO) some of the functions will still be undertaken by the Employment and Equal Opportunities Service (EEOS). These will include providing templates for businesses to use that would help small businesses with updating their policies and procedures, which small businesses had requested.

The States has also agreed, both in 2013 and 2020, that the Committee for Employment & Social Security should bring proposals to the States for the establishment, operation, and funding of an “Access to Work Scheme”. The following is taken from the 2013 report about such a fund.

“This would help small businesses and organisations to make adjustments that would not otherwise be considered reasonable... A decision on reasonableness, which fails solely on the grounds of cost to a small employer, and that might be wholly reasonable for a large employer, has the effect of skewing the labour market for disabled people towards larger employers. The fund will help balance this and increase opportunities for disabled people to

gain and remain in work with smaller employers.” [Billet d’État XXII of 2013, Article IX, paragraphs 61 and 62].”

I understand from the Committee for Employment and Social Security that work on this fund will commence shortly and the States will be given an opportunity, before the commencement of the Ordinance, to agree to help small businesses with such a fund.

### **Ground of Carer Status**

There are an estimated 4,000 to 6,000 (Carers Guernsey) people in Guernsey who are carers of persons with disabilities. Your amendment provides a new subparagraph 23(1) which excludes all these carers from **any protection** under the Ordinance for 65% of employers.

Your amendment does not just cover provisions and duties as an employer but would also include provision of goods, services, education, accommodation etc. It excludes protection from discrimination for carers in all these areas for small businesses, as you have defined them.

Such a wholesale exclusion for carers would be totally unacceptable.

With an ageing population and concerns that 300 people a year will need to come to Guernsey to provide a workforce for businesses, your amendment appears to go against making the most of our existing population. By accommodating requests from carers to enable them to undertake their work and caring duties it will mean that they will not have to give up work, potentially having to claim benefits, to enable them to care for loved ones.

### **Ground of Disability**

Ten years ago there were an estimated 13,299 ([Disability Needs Survey: Review of prevalence across Guernsey and Alderney \(signpost.gg\)](http://signpost.gg) (October 2012)) people with a disability in Guernsey, which is one person in every 5, or 21% of the population. This figure has no doubt risen in the subsequent 10 years, due to an ageing population and an overall increase in population.

Your amendment 23(2) is for employers of five or fewer employees to be exempt from:

1. the duty to make reasonable adjustments for a disabled person, and
2. the proactive duty to make reasonable adjustments in respect of disabled persons generally if they are a service provider, school or education provider.

To exempt 65% of employers from these duties would make the legislation ineffective and would completely undermine the Ordinance.

The duty to provide reasonable adjustments, that is proposed in the Ordinance, contains within it the concept that an employer or service provider would not have to make the adjustment if it was a disproportionate burden on them to do so. You might find our factsheet on reasonable adjustment helpful in explaining the concept and

terms used (see <https://www.disabilityalliance.org.gg/wp-content/uploads/2022/09/5.-Reasonable-adjustment.pdf> )

The concept of reasonable adjustment means that a large employer with few resources can have less of a duty than a small employer of 5 or fewer employees but with large resources. An example would be a large cash poor charity verses a small firm of accountants or lawyers. It is not just the number of employees that is considered in the test of reasonableness of the adjustment, but this would be the only test for the exemption to apply that you are proposing.

In answer to concerns that making adjustments would cause companies to go under the ESS put out the following as part of its series of myth-conceptions ([CHttpHandler.ashx \(gov.gg\)](#))

“Many adjustments involve a change in procedures or how work is undertaken, and cost nothing more than the time to consider and implement. Many other potential adjustments are low cost. The legislation will have built-in safeguards and limits to ensure that no organisation will have to undertake anything that is not necessary or appropriate, or would be a disproportionate burden. Good employers have nothing to fear from this legislation”

### **Already Tried and Failed**

One good thing about being late to the global table with prevention of discrimination legislation is that we can learn from other jurisdictions. Whilst we know Guernsey is unique and we are proud of our differences, when it comes to protecting our population from discrimination and prejudice, we can learn from other jurisdictions who have historically had a much more diverse population.

Both the UK and the USA had initially tried to limit the effects of anti-discrimination legislation by exempting small businesses. In both jurisdictions this failed as it was seen as discriminatory and did not change attitudes and behaviour where this was needed. Again the ESS have addressed the myth that small businesses do not have a duty under the Equality Act with one of its series of myth-conceptions ([CHttpHandler.ashx \(gov.gg\)](#))

“This is not true. The Equality Act 2010, which applies in England, Scotland and Wales, protects people from discrimination, harassment and victimisation in the workplace and wider society. No business or employer is exempt from the requirements of the Act because of size, but the expectations that apply to large and small businesses are different. This will be exactly the same in Guernsey. For example, when it comes to the duty to make reasonable adjustments, the duty is limited by the concept of disproportionate burden – so if the adjustment would cost too much, taking into account the financial resources of the organisation, the employer or service provider would not be obliged to make it.”

We are not aware of any jurisdiction in the world which now has exemptions for small businesses within anti-discrimination legislation or constitutional rights for its population.

## **Timing**

It has been mentioned to me that your amendment had the intention of only delaying the implementation of the effects of the legislation in respect of the grounds of carer status and disability.

Your amendment does not amend the commencement date in these areas but excludes Carer Status and reasonable adjustment on the grounds of disability for small businesses without a time limit. I therefore can only assume that this is intentional.

In terms of timing the commencement of the majority of the Ordinance is proposed for 1<sup>st</sup> October 2023. This provided an additional 6 months at the request of business organisations for small businesses in particular to get prepared for the changes.

However, implementation of anything to do with physical features has been delayed until 1<sup>st</sup> October 2028. This gives a full 6 years for anyone to become familiar with the provisions of the legislation before they will be required to make any alterations to physical features and then only if those changes are not a disproportionate burden.

## **Amendments to Allow Specific Debate**

I appreciate that some amendments might have been laid to allow a debate on a specific area a Deputy has a particular concern over, as a separate debate, rather than only having the opportunity to speak once on the substantive proposition.

However, I would urge anyone, including yourselves, who have proposed, seconded or co-ordinated any amendments to the Prevention of Discrimination Ordinance to carefully consider the effects of the substantive proposition should the amendment be accepted. In the case of your amendment this will have a huge impact on carers and persons with disabilities.

I understand that you are keen to put the interests of small businesses ahead of the interests of carers and disabled people, but I would urge you to reconsider. The Ordinance as proposed has had long and wide consultation. Following which the interests of all sides have been balanced giving a robust piece of legislation which, when commenced, will be proportionate, effective, and dissuasive to prevent discrimination on multiple grounds in most areas of our lives.

## **UN Convention on the Rights of Persons with Disabilities (UNCPRD)**

The States has previously agreed to extend the UNCPRD to Guernsey. If your amendment is approved it will mean that the Prevention of Discrimination (Guernsey) Ordinance, 2022, would not be compliant with the Convention.

## **Conclusion**

We want to ensure that the 6,000 carers and 13,299 persons with disabilities are able to live their lives free from discrimination. Where discrimination does happen, we want there to be recourse to enable the discrimination to be addressed. By exempting such a huge proportion of businesses and other organisations the

legislation will not be effective at achieving this primary aim that the Guernsey Disability Alliance has been campaigning for over the last 15 years.

Therefore, please withdraw amendment 8.

Yours sincerely,

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