



# GPEG's comments on the draft Prevention of Discrimination (Guernsey) Ordinance 2022

## Introduction

We promised a paper as soon as we could digest the Prevention of Discrimination (Guernsey) Ordinance 2022 – DRAFT ( the “proposed ordinance”) which can be found on the States of Guernsey website [here](#).

The 128 page proposed ordinance was produced last December it seems. It was distributed to approximately 30 organisations for comment apparently under some form of non-disclosure agreement. GPEG published the most wide-ranging and comprehensive commentary on the proposals, a copy of which can be found [here](#), and was surprised not to be on the list of persons circulated with the draft for comment. So, we asked for a copy on 29<sup>th</sup> December last year– Deputy Roffey responded to us denying us access – we quote:

“The concern being that new consultees would, by human nature, want to widen the debate to consider whether or not the policy decisions previously taken by the States were the correct ones.”

You might ask why the secrecy if according to Mr Roffey everyone is in favour of this legislation?

Favoured recipients of the draft at this stage certainly included disability groups and selected employment lawyers – all definite supporters of comprehensive discrimination enactments. We gather that most Deputies were denied copies too.

We asked him to take our request to his Committee (Deputy Roffey is President of the Committee for Employment & Social Security) which he apparently did and then they rejected us again as a potential recipient – this time accompanied by four pages of unconvincing gobbledygook drafted by a civil servant.

We wrote again telling Mr Roffey that reluctantly we would have to resort to “judicial review and/or the use of The Administrative Decisions (Review) (Guernsey) Law” in order to make this draft legislation available to a wider public audience. Mr Roffey took this to his Committee on 24<sup>th</sup> January followed by a public announcement on the 26<sup>th</sup> which follows:

“The Committee for Employment & Social Security has decided to make the draft Prevention of Discrimination (Guernsey) Ordinance available to anyone who wishes to see it, in the interests of transparency.”

**We had not previously seen Guernsey as being on the way to Damascus.**

## Overview

We are grateful that ESS decided that this draft legislation should be published, however, neither Mr Roffey, his committee nor the civil servants involved had the decency to confirm to GPEG their decision to publish on the government web site. Why the need for secrecy you might ask?

In a few days a pressing need for secrecy became a desire for transparency. Not quite what you would have got from the announcement's text but hey we were now able to download the text and read it.

Perhaps unsurprisingly the draft legislation actually is immaterially different from the text of the last policy document in its main thrusts. Actually, the further consultation could perhaps have been arguably seen as an unneeded extra. But given the shambles over the catholic schools nothing coming from this Committee should be a surprise!

The content of our previous review [here](#) is essentially still entirely relevant.

Some of the original recipients of the draft have been favoured with meetings to discuss such. We have heard of a cheerful meeting of (again selected) employment lawyers who see lucrative work galore in rewriting policies, and the Committee, reviewing the payroll for arguably paying people less because of a protected ground, training employees, reviewing what appropriate or reasonable adjustments might be, helping come up with "neutral" interview questions as well as a good range of Tribunal and Court processes. It appears that a couple of dozen legal slots are being filled in anticipation of good times ahead!

It is particularly galling for the definition of impairment in the definition of disability to be unchanged from the policy document. It is simply absurd. As the definition currently stands every soul on the Island is arguably disabled – the silliest part is a person who has "a condition .... which

affects a person's social interactions...". This includes, it seems, people who are traditionally viewed as rude or aggressive rather than being labelled disabled – which they are to be. Passing someone over for promotion because they do not get on with their colleagues is going to be potentially illegal and actionable.

Close behind in the race for total absurdity is "...a condition which results in a person learning differently from a person without the condition" – who doesn't have this condition? The whole area of mental health and discrimination is very difficult but it is a proven fact that we all learn differently from others – why would we label someone disabled because of differences in learning? It seems quick learners cannot in future be preferred by employers to slower learners.

Professional bodies awarding qualifications are it seems also not going to be able to discriminate even on grounds of mental incompetence.

There is much more – we have today published a full mark-up of the draft on our website [here](#).

The very real and sad outcome of this proposed legislation is that the burden of this law will mostly fall on small businesses who will lack resources and understanding and be soundly beaten up in judicial processes. They will not think that "substantial" means more than "minor or trivial" (as it is drafted) and they certainly do not know that they will be under a duty to make "reasonable adjustments" in their practices or premises, to deal with disabilities in job applicants – even if they do not hire them.

**This will cause economic harm as well as generating unfriendly employer/employee relationships.**

## Summary

GPEG is appealing to the business community to get behind us to ensure that any anti-discrimination legislation passed remains proportionate and realistic in a population such as ours with little evidence of a substantial current problem. Please help common sense prevail!

Having said all that, we positively support sensible anti-discrimination actions. We have no issues with much of the bill with most of our issues being in the economic and employment areas. None of the content on race, carer status, sexual orientation or religious belief poses any major basis for objection – and indeed we hope that these provisions work well – or even better - prove to be unneeded!