Employment and Equal Opportunities Service

Chapter 9: Complying with the Ordinance

This chapter will cover the following:

- Equal opportunities policy
- Training
- Monitoring
- Reviewing policies and procedures
- Implementation dates for legislation
- Accessibility

This section should be read in conjunction with Chapter 4 - service providers, Chapter 5 - education providers, Chapter 6 - clubs and assocations or Chapter - 7 accommodation providers, as appropriate to the organisation.

There is no single exhaustive or definitive check list that every single organisation must complete before the Ordinance comes into force, although there are a number of points that are going to be common to all organisations, regardless of size or complexity, as well as certain points that are going to be specific to service providers, schools and education providers, clubs and associations and accommodation providers, including for example the different dates for implementation.

Probably the single most important thing an organisation can do in preparing for the legislation is to raise awareness within the workforce around equality issues – particularly in the context of their business. The issues that a large financial services company might have to address in relation to their clients, will inevitably be quite different from a school in relation to their students, and again very different to a small club or association in relation to their members. This will

require organisations to reflect on how they operate and what barriers are put in place that affect the people they interact with and who have a particular Protected Ground. They must ask themselves is that barrier actually needed or could things be done in a different way.

It is hoped that by organisations asking themselves these questions, not only will it help them prepare for the implementation of the Ordinance, but it will also cause them to question how they operate, and also find new and better ways of working.

One of the key areas of preparation for organisations is to think about their current service users, students or members as the case may be, and identify those individuals who might have a disability, and then consult with them in relation to what reasonable adjustments they might need. In many instances, organisations may find that they are already making the reasonable adjustments that are required. For schools this might be provided through an existing Special Educational Needs (SEN) framework for some students, or for other organisations just through good practice of looking after service users or members. Some students may have a disability but not a specific additional learning need. By consulting with individuals, it might lead organisations to identify other ways in which they can support their service users, students, tenants or members.

9.1 Equal opportunities policy

An equal opportunities policy is a document which an organisation can use to set out its commitment to tackle discrimination and promote equality and diversity. The Ordinance does not require an organisation to have an equal opportunities policy, or if it does have one, what that policy should contain, but it is highly recommended as such a policy might form part of the organisation’s defence in some circumstances if a claim were to be made against the organisation.

An equal opportunities policy should apply to every aspect of the relationship with service users, students, tenants or members including how grievances are managed.

A policy might include:

- Statements outlining an organisation’s commitment to equality;
- Identification of the types of discrimination and the Protected Grounds covered by the policy i.e. disability, race, carer status, sexual

orientation, and religion or belief;
- In addition, a policy may also cover other areas of equality that are not currently Protected Grounds under the Ordinance, such as sex, age, gender reassignment, and pregnancy and maternity;
- Statements outlining the type of environment and culture you are aiming to
- create, including what is not acceptable behavior;
- Information about how policy will be put into action, including how individuals can raise concerns through grievances and how breaches of the policy will be dealt with; and
- Who is responsible for the policy and how it will be monitored and reviewed.

To make sure an equal opportunities policy has real meaning an organisation should:

- Demonstrate a commitment to equal opportunities from the top of the organisation;
- Promote the policy both to existing staff and other relevant individuals involved with the management of the organisation;
- Provide training for staff on what the policy says and what it means to them;
- Show a willingness to challenge poor behaviour and where necessary, take action against anyone not complying with the policy; and
- Regularly review the effectiveness of the policy.

Equal opportunities policies are not one size fits all. For example, a large commercial organisation based in multiple locations providing services to sophisticated clients will likely need something more complex and could wish to include details of equal opportunities monitoring. A small club or association run by volunteers is likely to need to have a more simplified document.

For an example of an equal opportunities policy, please see Equal Opportunities Policy- Appendix I.

9.2 Training

Equality training is a key part of any good equal opportunities policy, because if staff and those responsible for management understand what the Ordinance means for them as individuals, then an organisation is more likely to comply with its obligations.

Whilst there is no general legal requirement on organisations to undertake equality training it can be an important part of being able to demonstrate, in the event a claim is brought, that the organisation is taking actions to prevent discrimination, harassment and victimisation. Also, it is more likely to create an inclusive atmosphere where everyone in the organisation can succeed.

For those organisations that are subject to either the proactive duty to make reasonable adjustments or the public sector duty to prepare accessibility action plans, or wish to take positive action, then equality training will often be a key element.

When should training take place?

As part of preparing for the introduction of the Ordinance, it is recommended that organisations should consider arranging training for their staff about equality issues. In order to assist in this process, there is free training available, Consortium training.

In addition, once the Ordinance is in force then organisations might choose to provide training:

- During the induction process for new starters; and
- Periodically asking staff to either attend update courses or by completing online training.

What should the training cover?

There is no exhaustive list what equality training should cover, and it should be relevant to your organisation. However, in most instances training should include:

- An explanation of the Protected Grounds and what behaviour is and is not acceptable.
- The risk of ignoring or seeming to approve inappropriate behaviour;

- The impact that generalisations, stereotypes, unconscious bias, and inappropriate language can have on people's chances of obtaining work, promotion, recognition and respect;
- What is the duty of reasonable adjustments and how does it work; and
- The organisations equality policy and how it operates in practice, including any monitoring undertaken.

The Consortium training will help with the first four bullet points but it is important for organisations to also consider how its internal policies and procedures will operate, including grievance policies, complaints handling and what to do when requests for reasonable adjustments are received.

9.3 Diversity monitoring

As part of their equal opportunities policy, some organisations monitor and report on matters relating to their service users, students or members. There is no legal requirement on organisations to undertake diversity monitoring, but doing so can help organisations to assess whether, for example, they are:

- engaging with individuals who are disadvantaged or under-represented;
- providing opportunities to people fairly whatever their Protected Grounds; and
- making progress towards the aims set out in their equal opportunities policy.

Why consider monitoring?

Monitoring of equality-related issues by an organisation (and taking action where the information suggests there may be a cause for concern) can also be used as evidence if someone brings a tribunal case against them – although simply collecting the data without analysing it is not enough. It may also help to identify areas where taking positive action may be appropriate, for example by highlighting groups of service users with certain Protected Grounds who are disproportionately underrepresented.

Diversity monitoring will vary greatly from one type of organisation to another and can cover a wide range of matters.

- How many people with a particular Protected Ground use a service, or are students or are applying for membership, as the case may be;
- The satisfaction levels of different service users, students or member with different particular Protected Grounds; and
- Whether an action is disproportionately taken against service users, students or members with a particular Protected Ground.

How should monitoring take place?

Organisations also need to consider how they wish to collect the information, and whether this should be done on an anonymised basis. As part of this they also need to communicate the process to reassure people who provide information that it will not be used to discriminate against them and explain how the information will be used.

Example

As part of its admission process, a school asks potential candidates to complete a voluntary diversity monitoring form. The school makes it clear that there is no obligation to complete the diversity monitoring form, which is to be filled in on an anonymised basis and will be separated from their personal details by someone who is not involved in the admission process.

Whenever organisations are processing the personal, or special category personal data of their employees, including as part of any diversity monitoring, they must always be aware of their obligations under the Data Protection (Bailiwick of Guernsey) Law, 2017. See Legislation page Number 17.

9.4 Reviewing policies and procedures

An important aspect of preparing for the introduction of the Ordinance will be a review of the organisation’s policies and procedures to consider what (if any) changes might be required. What will be expected of each organisation will differ according to their size and resources so a large organisation with the necessary resources that already has extensive policies and procedures to review, may need

to do more than a small club or association, where polices are largely unwritten.

Every organisation should spend time thinking about the interaction they have with individuals who have different Protected Grounds, and consider whether their policies might have a greater impact on those individuals than others. This does not mean that the policy or procedure is necessarily discriminatory, but policies that indirectly discriminate would need to be objectively justified, and if someone has a disability, then the duty to make reasonable adjustments should be considered.

It is not expected that an organisation needs to consider every possible eventuality and come up with a new policy to address an issue that in reality may never happen. However, organisations are advised to consider their policies and procedures prior to the Ordinance coming into force and be able to justify a particular policy when necessary.

Organisations are not expected to be legal experts, and particularly in the case of smaller clubs and associations there is no expectation that they need to engage third parties to undertake a review of their policies and procedures. Indeed, the best person to consider whether or not a particular policy is justified is someone from within the organisation as they will understand their operations better than anyone else.

Indirect discrimination

Indirect discrimination can occur where an organisation has a policy or procedure in place (referred to in the Ordinance as being a provision, criterion or practice) which places people with a particular Protected Ground at a disadvantage and cannot be objectively justified. For further details on the concept of indirect discrimination please see Chapter 1.2.

When reviewing policies and procedures, the first aspect is to identify if there any disadvantage to individuals with a Protected Ground. The disadvantage could arise in different ways and some examples are set out below.

Example

Enrolment application for a school – Written application forms place people who are visually impaired at a disadvantage as they may have difficult in reading them.

Club social events – A club hosting a social event, at which only alcoholic drinks are served, may place people who are Muslim at a disadvantage as they are unable to drink alcohol.

Terms on which services are provided – Offering financial services products only to heterosexual married but not to same sex married couples or civil partners would place people with a particular sexual orientation at a disadvantage.

Once a disadvantage is identified then it is necessary for the organisation to be able to objectively justify the policy. This is a two-stage process for the organisation. It first needs to show that the policy achieves a legitimate aim and secondly consider whether the policy is a proportionate means of achieving that legitimate aim. A policy will not generally be considered proportionate if the organisation could have used less discriminatory means to achieve the same objective. Using the same examples above, the potential justification is considered below for the policies.

Example

Enrolment application for a school – The need to obtain information regarding potential students would be considered to be a legitimate aim. However, because the use of written forms place anyone who is visually impaired at a disadvantage, this is unlikely to be considered proportionate, unless the application form is made available in different formats such as using an increased font size or a format that can be read out using reading software.

Club social events – Promoting team culture and spirit would be a legitimate aim, but a club could make non-alcoholic drinks available so that the Muslim members could participate.

Terms on which services are provided – It would be difficult to demonstrate that not offering a benefit to same sex couples constituted a legitimate aim, therefore such a policy is not likely to be objectively justified.

Reasonable adjustments

An organisation will also need to consider its policy on reasonable adjustments. Where an individual has a disability, an organisation may also need to consider potential reasonable adjustments, and the precise nature of this duty will depend upon the capacity in which it is acting. For further details on the concept of reasonable adjustments please see Chapter 3.

As part of the duty to make reasonable adjustments, organisations have a specific duty to consult. It is recommended that before the Ordinance comes into force, organisations should arrange a discussion with any individuals who have a disability to consider what reasonable adjustments should be made, unless arrangements are already in place. There is no particular form or duration of consultation required, but it is recommended that notes be kept, and any agreed outcomes recorded. Data protection legislation must also be complied with.

It should be remembered that the duty to make reasonable adjustments will not apply to physical features until 1 October 2028. It will also not be possible to bring a claim for indirect discrimination due to a physical feature before this date.

In addition to the above, service providers from 1 October 2023 and schools and education providers from 1 September 2025 will be subject to an additional proactive duty to make reasonable adjustments. For further information on this duty please refer to Chapter 3.5.

Disability: Public sector duty to prepare accessibility action plans

In addition, in the case of public sector service providers, from no earlier than 1 October 2028 they will become subject to a duty to implement an accessibility access plan. For further information on this duty please refer to Appendix III.

9.5 Implementation dates for the legislation

If you are on a mobile device or would like to print the table below, please download the PDF version here:

Implementation dates for the legislation.pdf

Provision of Ordinance	**Employer**	**Service providers**	**Schools and education providers**	**Clubs and associations**	**Accomm provider**
General prohibitions on discrimination	1 Oct 2023	1 Oct 2023	Not before 1 Sept 2025*	1 Oct 2023	1 Oct 202
General duties of reasonable adjustments (Excluding physical features	1 Oct 2023	1 Oct 2023	Not before 1 Sept 2025*	1 Oct 2023	1 Oct 202

General duty of reasonable adjustments to physical features	Not before 1 Oct 2028	Not before 1 Oct 2028	Not before 1 Oct 2028	Not before 1 Oct 2028	Not befor 2028
Pro active duty to make reasonable adjustments (Excluding physical features	N/A	Not before 1 Oct 2028	Not before 1 Sept 2025*	N/A	N/A
Pro active duty to make reasonable adjustments to physical features	N/A	N/A	N/A	N/A	N/A
Duty to carry out minor improvements	N/A	N/A	N/A	N/A	Not in for Oct 2023 determin Regulatio
Duty to allow reasonable adjustments to physical features- residential landlords	N/A	N/A	N/A	N/A	Not befor 2028
Duty to allow reasonable adjustments to physical features- commercial landlords	N/A	N/A	N/A	N/A	Not befor 2028
Public sector duty to prepare accessibility action plans	N/A	Public sector only - 1 Oct 2028	Public sector only - 1 Oct 2028	N/A	Not befor 2028

*Where a school or education provider is acting as an employer or general service provider, rather than an education provider, duties came into force from 1 Oct 2023, in line with the dates in the first two columns.

If an act of discrimination occurs before the relevant implementation date, an individual will not be able to bring a claim under the new Ordinance. Claims cannot be brought after the implementation date for acts or omissions that occurred prior to the implementation date.

Those duties which come into force after 1 October 2023 will require a commencement regulation to be made by the Committee for Employment & Social Security and shall not have effect unless and until approved by a resolution of the States.

It should also be noted that the intention is that different Protected Grounds will be introduced over the next few years, including age, and that the existing Sex Discrimination Ordinance will be replaced, with sex, pregnancy, marital status and gender reassignment being added as Protected Grounds under the Ordinance.

9.6 Accessibility

Accessibility audit

An Accessibility Audit (also known as disabled access audit or access audit) could be a useful tool when considering reasonable adjustments or preparing accessibility action plans. An access audit is an assessment of a building, an environment or a service against best-practice standards to benchmark its accessibility to disabled people. Please go to the checklist in Appendix II for an example of an accessibility audit for a building. This will help you assess getting to your premises, ease of navigating around the building, the environment and the facilities available. The responses to the questions will then help you to develop an accessibility action plan. See Appendix III.

You may also wish to undertake an accessibility audit in relation to your online and digital systems and products, and for schools and education providers to consider the accessibility of the curriculum.

We have not supplied an example for online and digital systems as we recommend that you review these regularly as they may change in relation to digital developments. Please look at the following recommended links to assist

you in creating your own audit for these resources.

Recommended Links

Accessible documents

Information for businesses - Information for Businesses: States of Guernsey

Publishing accessible documents - Publishing accessible documents GOV.UK

Overview of the Accessible Information Standard - Overview of the accessible information standard NHS England

Make it easy- Making information easy for people with a learning disability - Making Information easy for people with a learning disability.

Accessible websites and digital accessibility

Information for businesses - Information for Businesses : States of Guernsey

Guidance and tools for digital accessibility - Guidance and tools for digital accessibility: GOV.UK

Accessible Information Standard Accessible information standard NHS England

Supporting disabled colleagues

Employment guide - Employment guide : Guernsey Employment Trust (get.org.gg)

Accessible services

Making your service accessible: an introduction - Service Manual - Making your service accessible: GOV.UK