



Chapter 2: Protected Grounds

The Ordinance makes it unlawful to discriminate against someone because of what are known as Protected Grounds. When the Ordinance comes into force there will initially be five Protected Grounds which are:

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- **Race**
 - **Carer status**
 - **Sexual orientation**
 - **Religion or belief**
 - **Disability**

See Part I of the Ordinance

This section of the Guide will explain the circumstances when someone is deemed to have a Protected Ground and is covered by the Ordinance.

Discrimination on other grounds

It is intended that a second phase of the discrimination legislation will be brought in at some point from 2025 onwards and that this will expand the current protection to include sex, marital status, gender reassignment, pregnancy and maternity as Protected Grounds under the Ordinance. At the same time this takes place, age will also be added as an additional Protected Ground.

It should be noted whilst it is already unlawful in Guernsey to discriminate in relation to employment on the grounds of sex, gender reassignment, marital status, pregnancy or maternity under The Sex Discrimination (Employment)

(Guernsey) Ordinance, 2005, see [Legislation page number 6](#). This is limited to employment, so does not cover organisations in other capacities.

A comparison between Guernsey, Jersey and the UK

For organisations who either have a presence in other jurisdictions, or who may have worked in other countries, it is important to understand that there are legal differences in Guernsey and elsewhere. Set out below is a table which shows how the Protected Grounds (which are sometimes referred to as protected characteristics elsewhere) will compare with the UK and Jersey:

Legal protection from discrimination for different grounds/characteristics in different jurisdictions

E&SP: Currently in force for employment and service provision

E: Currently in force for employment only

** Not yet in force, but planned

Protected Ground/ Characteristic	Guernsey	Jersey	UK
Disability	E&SP	E&SP	E&SP
Race	E&SP	E&SP	E&SP
Carer Status	E&SP		
Sexual Orientation	E&SP	E&SP	E&SP
Religion or Belief	E&SP		E&SP
Sex	E	E&SP	E&SP
Pregnancy/ Maternity	E	E&SP	E&SP
Gender re-assignment	E	E&SP	E&SP
Marital status	E		E&SP
Age	**	E&SP	E&SP

E: Protection for sex, gender reassignment, pregnancy or maternity and marital status is currently given by the Sex Discrimination Ordinance for employment matters only.

Protection from discrimination on these grounds in a non-employment context will be considered in phase 2 which will not come in until at least 2025.

** In Guernsey age will not become a Protected Ground until phase 2.

2.1 Protected Grounds - disability

Disability is one of the Protected Grounds under the Ordinance.

A person has a disability if the person has one or more long term impairments.

A long-term impairment is an impairment which:

- **has lasted, or is expected to last, for not less than six months;**
or
- **is expected to last until the end of the person's life.**

For these purposes an impairment means:

- **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;**
- **the presence in the body of organisms or entities causing, or likely to cause, chronic disease or illness;**
- **the malfunction, malformation or disfigurement of a part of a person's body;**
- **a condition or malfunction which results in a person learning differently from a person without the condition or malfunction;**
or
- **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.**

See section 1 of the Ordinance

A person has a disability if they have one or more long term impairments. The definition of disability has deliberately been drafted on a wide basis, in order to capture most long-term impairments that individuals may have.

Other Jurisdictions- UK and Jersey

The definition is wider than the respective positions in the UK and Jersey. In the UK the impairment needs to have lasted (or be expected to last) 12 months or more and it is necessary to prove the disability has a substantial and long-term negative effect on the person's ability to do normal daily activities. In Jersey, the impairment needs to have lasted (or be expected to last) 6 or more months (i.e. the same as in Guernsey) but the impairment must also be one that could adversely affect the person's ability to engage or participate in certain activities.

Where it is identified that an employee has a disability, then it will trigger certain obligations including the duty to make reasonable adjustments. For further details on this duty see [Chapter 3- reasonable adjustments](#).

Impairment

The first question that needs to be considered in determining whether or not a person has a disability is: do they have an impairment? An impairment can be physical, mental, intellectual or sensory. It can include illnesses or diseases, or disfigurements and is intended to capture almost any condition, illness or disease as can be seen from the definition. This is regardless of the effect that condition may have on the day-to-day activities of the person.

Example

A student is struggling in lessons and their parent raises a complaint that they prefer to learn complicated concepts through visual means.

Whether or not the student in this example has a disability will depend on if they have an underlying condition that would constitute a disability – even if it has never been diagnosed. However, if this is purely a preference of learning style, then even though they may learn differently from other people this will not constitute a disability.

Long-term

In order to qualify as a disability, any impairment must be “long-term”. This means it must last, or be expected to last, for not less than six months’ or until the end of the person’s life.

For the purposes of considering if an impairment has lasted, or can be expected to last, for six months then you should include any period of remission where the impairment has the potential to recur, or any period where the person is receiving medical treatment which controls the symptoms of the impairment to any extent. This is intended to cover conditions such as multiple sclerosis or cancer which can go into a period of remission.

If there is any doubt as to whether an impairment is a long-term impairment, medical evidence may be sought by the person with the impairment from a registered health professional, special educational needs coordinator or occupational health practitioner, as appropriate, as to the expected duration of the impairment.

If there is any doubt of the severity and, as a result, the length of duration of the condition, an organisation may ask the person to seek medical evidence to determine whether or not a condition amounts to a disability, but this should only be in exceptional circumstances, as in most circumstances provided a condition is expected to last at least six months, then it is likely to be a disability irrespective of evidence supporting it as such.

Example

Whilst on holiday, a tenant suffers fracture of their leg. Such an injury would likely constitute an impairment, as it constitutes a malfunction of part of their body.

If the break was only a minor fracture and it was expected to heal within six months' then it would not be classed as "long term", so would not constitute a disability.

However, if the injury was a serious break, which was expected to take more than six months to treat and heal, then it would be deemed long-term and so would constitute a disability.

Anxiety, depression, stress or other mental health conditions

Where an individual has a mental condition such as anxiety, depression, stress or other mental health conditions on a long-term basis (i.e. has lasted or is expected to last for at least 6 months), then this will likely amount to a disability. In these circumstances, whilst it is not necessary for someone to receive a formal diagnosis of a specific mental health condition in order to be considered to have an impairment, a service user cannot simply self-diagnose that they have a mental health condition. There needs to be a balance. Whether or not they have an impairment will always come down to their individual circumstances, but this is not intended to be a high threshold and there is no requirement to have a particular level of adverse effect on the individual.

It is understood that in the case of anxiety, depression, stress or other mental health conditions, it can be difficult to anticipate the likely duration of the impairment. As noted above, the Ordinance specifically anticipates medical evidence can be used for these purposes. Furthermore, medical evidence can also be useful in considering the legal duty to make reasonable adjustments, particularly in the context of education providers.

Even if someone may not yet technically qualify as having a long-term impairment, it can be good practice for any education providers to consider making reasonable adjustments for students who have anxiety or stress. This is because it is better to keep someone in education than off sick. In addition, where an education provider fails to address issues such as stress, a condition may

become a long-term impairment and therefore a disability due to the passage of time.

2.2 Protected Grounds - race

Race is one of the Protected Grounds under the Ordinance.

Race can mean any of the following:

- **colour**
- **nationality**
- **ethnic origins**
- **national origins**
- **descent, which includes caste**

See section 2 of the Ordinance

When someone has been discriminated against on the grounds of their "race" it could include treating someone less favorably because of their "skin colour" or "nationality". It also extends to treating someone less favorably on the grounds of their "national origins" or "descent" which includes being of Bailiwick of Guernsey origin.

The term "caste" is not defined in the Ordinance. In general terms it relates to a hierarchial system within which membership is determined by birth.

The term "ethnic origin" is much broader and covers identifiable groups who might share the same language, religion, literature, or geographical origin etc. such as Jews, Romany Gypsies and Sikhs.

Two or more distinct racial groupings

In addition, it is possible that a racial group can comprise of two or more distinct groupings, such as Russian Jews, Gypsies and Irish Travelers and British Sikhs.

Example

An Irish person claimed that their line manager ridiculed their "funny accent", referring to them as an "Irish gipsy" and made frequent derogatory references to them in relation to a reality TV show.

This would be an example of harassment on the grounds of race, using two distinct racial groupings.

2.3 Protected Grounds - carer status

Carer status is one of the Protected Grounds under the Ordinance.

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

- **B's disability is of a nature which requires continuing, regular or frequent care or support of the kind that A is providing; and**
- **A lives with B or is a close relative of B.**

For these purposes a close relative means any of the following relationships:

- **Spouse**
- **Parent**
- **Partner**
- **Grandchild**
- **Child**
- **Grandparent**
- **Sibling**
- **Parent of a spouse or partner**

See section 3 and section 72 of the Ordinance

Carer status refers to someone who has total or considerable responsibility for ongoing care and support of another person. The carer must fall within the definition above of a close relative, or otherwise live with the person who receives the care.

Disability

In order to qualify for carer status, the person receiving the care or support must be deemed to have a disability that is covered by the Ordinance, i.e. it must be a long-term impairment.

Continuing, regular or frequent care or support

The disability must be of a nature which requires “continuing, regular or frequent care or support”. This isn’t intended to be a high bar, so it could cover things such as annual hospital visits for check-ups, or a series of continuing issues that may occasionally arise.

There is no requirement that the care or support must be permanent. The Ordinance recognises any impairment which lasts for 6 months or until the end of a person’s life as a disability.

Attendance at a one-off hospital appointment would unlikely to be considered to be “continuing, regular or frequent care or support” but if the visit was part of a package of support for different appointments relating to the same condition, it may.

Example

A carer applies to rent a property but has their application refused as they are a carer.

The landlord is aware of their position and knows they receive a carers allowance. They assume the individual's financial situation may not be resilient enough to ensure they can pay the rental for the property.

This would be discrimination against the individual on the ground of carer status.

Professional carers

There is an exception under the Ordinance where the care is support provided by a person in a paid, professional capacity, for example under a contract of employment or in the course of self-employment.

Example

A nurse is employed as a care worker supporting vulnerable adults, and through that role provides care for a close relative. The nurse would not be considered as having carer status.

However, if the support given is unpaid and not part of a professional role/job then they would have carer status.

2.4 Protected Grounds - sexual orientation

Sexual orientation is one of the Protected Grounds under the Ordinance.

Sexual orientation can mean a person's sexual orientation towards:

- **persons of the same sex**
- **persons of a different sex**
- **persons of both the same sex and persons of a different sex**

See section 4 of the Ordinance

Someone's sexual orientation describes who they are attracted to. It is unlawful to discriminate on the grounds of someone's sexual orientation. This would include treating someone less favourably because of who they are attracted to, e.g. that they are gay, lesbian, bisexual, heterosexual or other, would be unlawful. The Ordinance would also protect someone who is treated less favourably because they are connected to someone who has a particular sexual orientation. This is known as discrimination by association. The Ordinance would also protect someone who it is believed (imputed) they have a particular sexual orientation even if that is not the case.

Example

A service provider and user get into an argument over an issue. During the course of that argument, the service provider uses a derogatory term relating to what they believe the service user's sexual orientation to be.

The use of derogatory terminology relating to a person's sexual orientation in these circumstances is likely to amount to harassment, even if the service user does not have that particular sexual orientation.

It is important to remember that a person's sexual orientation is different from their sex, gender identity (i.e. how an individual identifies) and/or whether they have undergone gender reassignment. Protection from discrimination in employment due to sex or gender reassignment is set out in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. See [Legislation page number 6](#).

2.5 The Protected Grounds - religion or belief

Religion or belief is one of the Protected Grounds under the Ordinance.

Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

Religion means any religion and includes any religious background or outlook, and a reference to religion also includes a reference to a lack of religion.

See section 5 of the Ordinance

Religious belief

Religious belief can cover any religion, such as Christianity, Judaism, Islam or Buddhism, or a smaller religion like Rastafarianism, as long as it has a clear structure and belief system. The Ordinance will also protect against those individuals who may be discriminated against because they lack either a specific or any religious belief, as well as manifestations of their belief.

Example

A school operates a strict uniform policy that prevents the wearing of jewellery, and so rejects a request from a Christian student to allow them to wear a plain silver cross as an expression of their faith.

Such a policy could amount to indirect discrimination if the school was unable to objectively justify it.

Philosophical beliefs

The Ordinance also extends to philosophical beliefs. The Ordinance does not define what this term means, but based on decisions in the UK which the Guernsey tribunals are likely to follow, in order to be protected any belief:

- must be genuinely held;
- is not just an opinion or view-point based on the present state of information;
- must be weighty and substantial;
- must attain a certain level of cogency, seriousness, cohesion and importance; and
- must be “worthy of respect in a democratic society”.

Example

A person who considers themselves an ethical vegan and who does not eat or wear animal products or use banknotes thought to be produced with animal products is capable of having a philosophical belief within the meaning of the Ordinance.

Accordingly, if a service provider sent them a piece of raw meat as a prank, then if this caused offence, then this would likely constitute harassment related to a Protected Ground.